

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 12-12020-mg

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5 In the Matter of:

6
7 RESIDENTIAL CAPITAL, LLC, et al.,

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9 Debtors.

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12
13 United States Bankruptcy Court

14 One Bowling Green

15 New York, New York

16
17 September 27, 2012

18 10:02 AM

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20 B E F O R E:

21 HON. MARTIN GLENN

22 U.S. BANKRUPTCY JUDGE

(Doc no. 1419) Application of the Official Committee of
Unsecured Creditors for Entry of an Order Authorizing the
Employment and Retention of J F. Morrow, as Consultant to the
Committee Nunc Pro Tunc to September 5, 2012 filed by Stephen
Zide on behalf of Official Committee Of Unsecured Creditors.

(CC: Doc no. 1228, 1321, 1341, 1326, 1228, 1077) Motion of
Patrick Hopper for Reconsideration of Order Authorizing
Employment and Retention of Bradley Arant Boult Cummings LLP as
Special Litigation and Compliance Counsel to the Debtors.

(CC: Doc no. 1356) Debtors' Motion for Entry of an Order Under
Sections 105 and 363 of the Bankruptcy Code Authorizing the
Reimbursement of Expenses Including Counsel Fees Incurred by
the Independent Directors filed by Gary S. Lee on behalf of
Residential Capital, LLC.

Status Conference RE: GMAC Mortgage, LLC. v. Silmon (Circuit
Court of Jefferson County, Alabama (Birmingham Division), Case
No.: CV-2009-902322)

(Doc no. 1418) Application of the Official Committee of
Unsecured Creditors for Entry of an Order Authorizing the
Employment and Retention of Analytic Focus, LLC as Consultant
to the Committee, Nunc Pro Tunc to August 28, 2012 filed by
Stephen Zide on behalf of Official Committee Of Unsecured
Creditors.

Status Conference RE: Plan Developments

Adversary proceeding: 12-01731-mg United States of America, Ex
Rel. et al. v. GMAC, Mortgage Co., LLC
Pre-trial Conference.

(CC: Doc# 14) Motion to Dismiss Adversary Proceeding / Debtors
Motion for Judgment on the Pleadings in Response to Yvonne D.
Lewis, et al. Adversary Complaint by Surplus Creditor s for
False Claims and RICO, 31 U.S.C.A. 3729 to 3733; 18 U.S.C. 666,
1962; BR Rule 7008

CC: Doc# 12 Motion for Summary Judgment By Plaintiffs; Grounded
On (1) Federal Preemptions For Federal Programs Under HUD (42
U.S.C. 3535 (i) (1)) And US DOT (49 U.S.C. 47502); And
"Separation Of Powers" Of Federal Agencies On 09/08/2012 In
State Court Case No. 05-CV-4555, FR. CNTY., Ohio.

(CC: Doc no. 1242, 945, 61) Status Conference RE: Pre-Auction
Objections of the RMBS Trustees and Related Joinders to the
Debtors' Sale Motion.

(CC: Doc no. 1426) Status Conference RE: Debtors' Application
for an Order Under Section 327(e) of the Bankruptcy Code,
Bankruptcy Rule 2014(a) and Local Rule 2014-1 Authorizing the
Debtors to Employ and Retain Pepper Hamilton LLP as Special
Foreclosure Review Counsel for Bankruptcy Issues to the
Debtors, Nunc Pro Tunc to May 14, 2012 filed by Gary S. Lee on
behalf of Residential Capital, LLC.

(CC: Doc no. 1427) Status Conference RE: Debtors' Application
Under Section 327(e) of the Bankruptcy Code, Bankruptcy Rule
2014(a) and Local Rule 2014-1 for Authorization to Employ and
Retain Hudson Cook, LLP as Special Counsel to the Debtors, Nunc
Pro Tunc to May 14, 2012 filed by Gary S. Lee on behalf of
Residential Capital, LLC.

(CC: Doc# 1416) Debtors Motion Under Bankruptcy Code Sections
105(a) and 362(d) for Entry of an Order Approving Procedures by
Which Third Parties May Request and Obtain Stipulated Relief
from the Automatic Stay to Commence or Continue Actions to
Foreclose Senior Liens.

(CC: Doc# 1415, 1229) Hearing in Reference to Motion in

Reference to Stay Order Violations by GMAC - GMAC Mortgage
Violated/Stay Order Violation Re: GMAC Mortgage Fabricated
Documents and Sold Jackson Home Illegally filed by Corla
Jackson. (related document(s)1229)

(CC: Doc# 1357) Status Conference RE: Debtors Motion for Entry
of an Order Under Bankruptcy Code Section 363 and Bankruptcy
Rule 6004 (I) Authorizing the Debtors to Compensate
PricewaterhouseCoopers, LLP for Foreclosure Review Services in
Furtherance of the Debtors Compliance Obligations Under Federal
Reserve Board Consent Order and (II) Reaffirming Relief
Granting in the GA Servicing Order.

(CC: Doc# 1264, 1494) Motion to Appoint Committee and Motion to
Join in Motion to Appoint Committee.

Doc# 1591 Motion to Join Additional Homeowners to the Motion
for an Order Appointing an Official Committee of Borrowers.
(related document(s)1264)

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RESIDENTIAL CAPITAL, LLC, et al.
P R O C E E D I N G S

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2 THE COURT: Please be seated. All right, we're here n
3 Residential Capital, number 12-12020. There are also some
4 adversary proceedings, but I'll deal with that when the time
5 comes.

6 Mr. Lee?

7 MR. LEE: Good morning, Your Honor. Gary Lee from
8 Morrison & Foerster for the debtors. Your Honor, the first
9 item on the agenda today is on page 6 of the amended agenda,
10 which is the status report on the plan negotiation process.

11 THE COURT: Can I ask you something? I looked over
12 the agenda, and there are two matters that are listed on the
13 electronic docket that I don't see on the agenda. Maybe I just
14 missed it when I went over. It's the creditors' committee has
15 two applications to retain experts. Are they still on here?

16 UNIDENTIFIED SPEAKER: At the end of the agenda.

17 THE COURT: I'm sor -- the end of the agenda? Okay,
18 that's fine.

19 All right, go ahead, Mr. Lee.

20 MR. LEE: Your Honor, at the September 11th hearing,
21 you asked us to work with Mr. Eckstein and with the committee
22 professionals to identify what we thought were the plan
23 negotiation issues and also to come up with an active process
24 for negotiations with and among the creditors, and to report
25 back to you today.

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1 I'm pleased to report that with the very active
2 cooperation of the committee professionals, we've made progress
3 on both fronts.

4 THE COURT: I did read the status report that you
5 filed.

6 MR. LEE: Okay. Well, then Your Honor, other than to
7 note that there's general consensus on what the plan issues
8 are, and without attempting to understate the difficulty of
9 resolving them, there is, Your Honor, in place, a process now
10 to begin active discussions with the different constituents.

11 I think Your Honor directed at the last hearing that
12 we begin with meetings with AFI and the committee.

13 THE COURT: Yes. Have any of the --

14 MR. LEE: And that's been set.

15 THE COURT: -- meetings been scheduled?

16 MR. LEE: Yes, Your Honor. And also a meeting's been
17 scheduled with the junior secured bond groups and with the
18 committee as well, Your Honor.

19 THE COURT: All right.

20 MR. LEE: And e-mails have gone out to the committee
21 and to AFI to set a further series of meetings with the
22 different constituencies, including the senior notes, the
23 monolines, the securities claimants, and also with the
24 borrowers as well, Your Honor.

25 THE COURT: When are the first meetings scheduled for?

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1 MR. LEE: I believe, Your Honor, the first meeting is
2 on October the 10th. Okay, the 9th, Your Honor.

3 THE COURT: All right. Mr. Eckstein, do you want to
4 be heard on this?

5 MR. ECKSTEIN: Your Honor, good morning. Kenneth
6 Eckstein of Kramer Levin. Mr. Lee correctly characterizes the
7 efforts that the debtor and the committee have been making to
8 try to organize plan discussions. I don't want to minimize the
9 substance that has to be dealt with here.

10 THE COURT: Well, that was my reaction when I read the
11 status report, which I was glad to see and I think -- until the
12 parties, the constituencies, begin speaking with each other,
13 the difficult issues aren't going to move forward. There are a
14 lot of difficult issues.

15 MR. ECKSTEIN: There are. I think it is very useful
16 for these meetings to be set up. And as Mr. Lee indicated, all
17 the parties are, I think, being contacted. In addition, I've
18 been having discussions among the various constituencies within
19 my committee about plan-related issues and how that ultimately
20 can be incorporated into what hopefully will be productive
21 discussions.

22 I think this process takes some time, Your Honor. But
23 I think that there is a good structure in place. And I would
24 encourage that we spend the next couple of weeks trying to lay
25 a foundation and see what the key issues are on which I'll come

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1 back.

2 THE COURT: Yes. I mean, I don't -- other than
3 attempting to jump start the process, I think that I don't see
4 any reason for further status reports to me on it at this
5 stage. The process will work best if it can occur
6 confidentially between the parties. Unless somebody comes to
7 me with a specific problem that would ordinarily require the
8 Court to intervene, I think you just ought to carry on.

9 The only thing I want to be sure of is, is that there
10 is a regular dialog going on with the constituencies. If
11 that's happening, then it should happen without my involvement.
12 Okay?

13 MR. ECKSTEIN: The only other point I think we want
14 to -- we want to just emphasize that from our perspective,
15 we're expecting that all parties are going to come to the table
16 without any preconceived either commitments or limitations.
17 And we're expecting that that's the only way there's going to
18 be real progress. And I think we'll have to see how that plays
19 out.

20 THE COURT: Okay. I think, you know, in -- obviously
21 exclusivity is going to be back on the table before the end of
22 the year. And I'm not prejudging anything, but I think I made
23 clear when I only granted the extension into December that I
24 fully contemplate extending exclusivity further. I just wanted
25 to get this process underway. So in any -- I don't want

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1 anything further in writing about it. I think when we get into
2 November, the briefest reports: Yes, we've continued to have
3 meetings with the various constituencies. That's the -- unless
4 there are specific problems that somebody's going to raise with
5 me, I don't want to know more than that. I just want to be
6 sure that the process is moving forward. Okay?

7 MR. LEE: Yes, Your Honor.

8 THE COURT: Thank you very much, Mr. Lee. All right,
9 we can go on to the next agenda item.

10 MR. LEE: Okay.

11 MR. SHORE: Your Honor?

12 THE COURT: Sure, Mr. Shore. Come on up.

13 MR. SHORE: Sorry. Just in the context of --

14 THE COURT: Just --

15 MR. SHORE: -- a status report to the Court --

16 THE COURT: -- make your appearance.

17 MR. SHORE: Sure. Chris Shore from White & Case on
18 behalf of the ad hoc group of senior secured notes. And I just
19 rise briefly to talk about preconceived commitments. I just
20 wanted to let Your Honor know, we walked into this case with
21 plan support agreements in our group, based on a very quick
22 exit from an 11. For various reasons, that's not happening
23 now. So we either already terminated or in the --

24 THE COURT: Am I supposed to be surprised at that?

25 MR. SHORE: No. We're in the process of terminating

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1 the PSAs. So we'll be coming to the settlement agreements with
2 an open mind about a new plan.

3 THE COURT: Okay. We've got somebody else. This
4 really shouldn't take much time here. We've got a lot to
5 cover. Mr. Golden?

6 MR. GOLDEN: This won't take long, Your Honor, thank
7 you. Daniel Golden, Akin Gump, counsel for Aurelius Capital.

8 Your Honor, we read the status report, and we are
9 ready, willing, and able, when the debtors get to us, to begin
10 in negotiations. One troubling aspect, however, Your Honor,
11 that I did want to bring to your attention. Aurelius has had a
12 series of correspondence with the debtors to get requested
13 documentation, information that's readily available to the
14 debtors, that would be a necessary component to any --

15 THE COURT: Look if --

16 MR. GOLDEN: -- legitimate --

17 THE COURT: -- you have a discovery dispute, I have a
18 process for bringing discovery disputes to my attention. This
19 is not the time or the place or the manner to do that. So take
20 it up with the debtor. If you can't resolve the issue
21 satisfactorily, arrange a conference call with the Court and I
22 will deal with discovery in that context, not in today's
23 context without any papers. Thank you.

24 MR. GOLDEN: Thank you, Your Honor.

25 THE COURT: Mr. Lee?

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1 MR. LEE: Your Honor, just one brief update. I think
2 you asked at the last conference for a status report in the
3 KEIP as well, which I did not put into the schedule.

4 THE COURT: Well, I'm not sure I asked for a status
5 conference. I sort of -- I think you weren't here --

6 MR. LEE: Just an update --

7 THE COURT: -- Mr. Marinuzzi was here. And what I
8 indicated was if the parties were going to -- you know, I
9 obviously issued my opinion and if the debtor was going to go
10 ahead -- I understood that time may be important. And the
11 Court was certainly prepared to entertain the renewed motion if
12 it was made.

13 MR. LEE: Thank you. Just briefly, Your Honor. We
14 sent around a revised plan to both the committee and the U.S.
15 Trustee on September the 6th, with revised metrics that were
16 intended to be consistent with Your Honor's order in relation
17 to the KEIP. My understanding is the committee has signed off
18 on that. The U.S. Trustee has had some supplemental requests
19 that they made to us including, effectively, a legal brief
20 demonstrating why the revised KEIP was consistent with Your
21 Honor's order. And I understand from Mr. Masumoto that they're
22 continuing to ask questions and discuss it internally, but that
23 we should be a position to come back to you, hopefully next
24 week.

25 THE COURT: Okay.

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1 MR. LEE: Thank you, Your Honor.

2 THE COURT: Mr. Masumoto, is there anything you want
3 to say on that subject?

4 MR. MASUMOTO: No, Your Honor. Mr. Lee summarized the
5 current status of the process.

6 THE COURT: Okay. I mean, I understand that time is
7 important, particularly when -- if the metrics or some of the
8 metrics are tied to the auctions, the auction is not that far
9 in the distant future, and therefore it's important to try and
10 get this resolved.

11 Certainly, if there's agreement, I can hear it on
12 quite short notice. If there's still disputes, we'll -- I want
13 to allow the U.S. Trustee time to respond. But --

14 MR. MASUMOTO: Thank you, Your Honor.

15 THE COURT: Okay. All right. Next, Mr. Lee?

16 MS. BARRAGE: Good morning, Your Honor. Alexandra
17 Barrage of Morrison & Foerster on behalf of the debtors. I'm
18 here to report on our progress in seeking to resolve the RMBS
19 trustees' pre-auction objections which were filed on August
20 23rd in conjunction with this Court's previously entered
21 revised joint omnibus scheduling order on July 31st.

22 Your Honor, will recall that this scheduling order,
23 negotiated by the debtors, the committee, the trustees, and
24 various institutional investors, after the marathon of day-one
25 negotiations, involved two topics. The first topic covered the

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1 9019 settlement and discovery with respect to that issue. And
2 the second topic covered the issue -- the topic that we are
3 speaking about this morning with respect to a discovery and
4 briefing schedule in connection with the trustees' earlier
5 filed limited objection to the debtors' sale motion. Our
6 update, this morning, Your Honor, only focuses on that second
7 matter, which is currently scheduled to be heard before Your
8 Honor on October 17th.

9 Since the filing of the pre-auction objections,
10 Morrison & Foerster, counsel for the trustees -- and there are
11 four trustees -- in their capacity as trustees, as well as in
12 their capacity as master servicers, and Nationstar, have been
13 in regular discussions in an effort to try to resolve these
14 issues prior to the commencement of the auction of the
15 servicing platform, which is scheduled to commence on October
16 23rd. Morrison & Foerster has also been in regular contact
17 with counsel for the creditors' committee on these issues.

18 Although there has been significant progress made on
19 one front -- and I'll get to that in a minute, Your Honor --
20 there still remain several issues outstanding between the
21 parties on the substance of the trustees' pre-auction
22 objections. After this morning's status conference, counsel
23 are convening in person in an attempt to resolve these
24 outstanding issues.

25 To the extent an agreement is reached, the debtors

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1 would propose filing an agreed-upon stipulation and order
2 before this Court, on or before October 3rd. If, however, the
3 parties do not resolve their remaining issues, the debtors
4 propose filing their response to the pre-auction objections on
5 October 10th, which is seven days prior to the hearing date,
6 and which hopefully would give Your Honor ample opportunity to
7 review the responses and respond.

8 I think all parties are in agreement that resolution
9 of these pre-auction objections prior to the auction remains
10 critical, particularly to the extent it could affect bidding.
11 And so the debtors are certainly working hard to try and
12 resolve these issues with the parties.

13 But before I continue, I wanted to ask the Court
14 whether that proposed scheduling would work?

15 THE COURT: When I see -- if you reach an agreement --

16 MS. BARRAGE: Right.

17 THE COURT: -- with respect to the October 3rd date,
18 if you reach a stipulation, I think you need to bring it before
19 the Court on presentment --

20 MS. BARRAGE: Um-hum.

21 THE COURT: -- so that any other parties-in-interest
22 who have an objection can assert it. I won't simply enter an
23 order on a stipulation. Hopefully that will resolve things,
24 but there have been lots of parties who've been objecting to a
25 whole variety of things in the case. So October 3rd is next

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1 Wednesday?

2 MS. BARRAGE: I think so, Your Honor.

3 THE COURT: You should indicate in the notice of
4 presentment that any objections to the proposed stipulation
5 shall be filed by noon, Tuesday October 9th.

6 MS. BARRAGE: Was that October 9th, Your Honor?

7 THE COURT: Yes.

8 MS. BARRAGE: Okay.

9 THE COURT: You're on the calendar for the next day at
10 10. And so if possible, I'll endeavor to resolve -- hopefully
11 there won't be -- if you can work out the agreement, hopefully
12 there won't objections. If there are, I'll either take them up
13 on the 10th or indicate then when -- if I need more time to
14 review it, when I will. Okay?

15 MS. BARRAGE: Your Honor, I believe the scheduled
16 hearing date is actually for the 17th.

17 THE COURT: I know. But I have -- there is a ResCap
18 hearing on October 10th.

19 MS. BARRAGE: Okay.

20 THE COURT: What I'm saying is, if you're able to
21 reach an agreement with the trustees, and you present it in a
22 stipulation on October 3rd, I'm setting an objection deadline
23 of October 9th -- the court's closed on the 8th. I'm setting
24 an objection deadline on the 9th. And if possible, I will --
25 you can add it to the agenda for the 10th. If I feel I can

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1 resolve the matter on the 10th, I will, so as not to wait until
2 the 17th.

3 MS. BARRAGE: I appreciate that, Your Honor.

4 THE COURT: If you're filing objections on the 10th,
5 it'll be on the calendar for the 17th. Okay?

6 MS. BARRAGE: Yes. Thank you very much, Your Honor.

7 The good news, Your Honor, is that on an important
8 matter involving the debtors, Nationstar, and the trustees,
9 negotiations over the past several months have been actually
10 very fruitful. Although this matter technically falls outside
11 the scope of the pre-auction objections, it is related to the
12 debtors' sale of the servicing platform, and I think
13 demonstrates the ability of the parties to work together on
14 issues directly affecting the estate. With Your Honor's
15 permission, I'd like to briefly --

16 THE COURT: Go ahead.

17 MS. BARRAGE: -- discuss this before highlighting some
18 of the open issues.

19 Your Honor, as of last Tuesday, the debtors,
20 Nationstar, and the RMBS trustees agreed on a form of omnibus
21 pooling and servicing agreement amendment. And essentially
22 what this omnibus amendment does, is it allows GMAC Mortgage,
23 in its capacity as servicer, for certain securitizations
24 sponsored by ResCap, to enter into financing facilities which
25 require an assignment or a pledge to a lender or a trustee on

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1 such lender's behalf, of GMAC Mortgage's rights to be
2 reimbursed for advances that it made under servicing agreements
3 relating to these securitizations.

4 So with this form of omnibus amendment in hand,
5 bidders now have greater certainty about their ability to
6 finance these reimbursement amounts, which, in turn, should
7 allow bidders to pay a higher value for these advance --

8 THE COURT: Let me just -- I want to be clear on this.

9 MS. BARRAGE: Sure.

10 THE COURT: This is something that's already been
11 executed?

12 MS. BARRAGE: It's been agreed to by the parties, Your
13 Honor. There is a condition -- there are various conditions
14 built into the amendment, one of which is bankruptcy court
15 approval of the omnibus form of amendment. And we would seek
16 to incorporate the terms of that amendment in a revised form of
17 sale approval order, which would inure to the benefit of either
18 our stalking horse or any other --

19 THE COURT: Here's what I'm -- I want to be sure --

20 MS. BARRAGE: Um-hum.

21 THE COURT: -- that all bidders in the auction for the
22 servicing platform -- that it's a level playing field; that as
23 soon as possible the form of the agreement be filed -- I
24 understand it's got conditions, including approval of the
25 Court. Obviously, Nationstar has to ultimately -- the ultimate

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1 approval is Nationstar has to be the successful bidder. But I
2 want to be sure that there's nothing about this amendment that
3 unfairly tilts the auction toward Nationstar and chills any
4 other bidders. I've no reason to believe it does, but I want
5 to be sure that any and all bidders have ample time to review
6 the agreement.

7 So what I don't want to happen is two days before the
8 auction, for the first time, to have the omnibus PSA amendment
9 filed with the Court. Because my reaction to that would be --
10 is if I hear objections then, is that bidders have not had an
11 adequate opportunity to review that agreement and take it into
12 account in their bids.

13 So the sooner you're able to document and file the
14 proposed amendment, the better I think it will be. I want to
15 be sure that there is a level playing field for all bidders in
16 an auction.

17 MS. BARRAGE: We appreciate that, Your Honor. In
18 fact, to your point, the form of omnibus amendment has already
19 been circulated to our financial advisor, Centerview. I don't
20 know for sure whether that's, in fact, been transmitted to
21 potential bidders, but it certainly will be done.

22 THE COURT: I'm not -- I don't want to get -- I'm not
23 micromanaging it. I --

24 MS. BARRAGE: I understand.

25 THE COURT: -- just want to be sure that I suddenly

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1 don't have a lot of complaints that it chilled the bidding.

2 Okay?

3 MS. BARRAGE: I understand, Your Honor.

4 So the remaining issues, really, in terms of the pre-
5 auction objections, and I think that they're points that are
6 raised specifically in the trustees' papers, really relate to
7 the scope of Nationstar's obligations going forward, post-
8 closing. And in addition, one of those issues touches on the
9 indemnification of the trustees for any losses incurred by
10 those trustees under the provisions of those documents. And
11 basically, Your Honor --

12 THE COURT: Which doc -- under the provisions of which
13 documents?

14 MS. BARRAGE: The pooling and servicing agreements.
15 And as a preliminary matter, Nationstar has told us that they
16 would agree to pick up those indemnification obligations of the
17 trustees, including costs and expenses, with several
18 conditions, if you will. One --

19 THE COURT: Just wait, Mr. Siegel.

20 MR. SIEGEL: These are settlement discussions. I
21 don't think she should be --

22 THE COURT: Okay.

23 MR. SIEGEL: -- putting it on the record.

24 THE COURT: Are these settlement --

25 MS. BARRAGE: Your Honor --

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1 THE COURT: -- discussions?

2 MS. BARRAGE: -- these are topics for discussion later
3 this afternoon.

4 THE COURT: Well, then take them up with Mr. Siegel
5 and his colleagues. Don't -- I don't want to -- and I
6 understand, these are important issues, and hopefully they'll
7 be resolved consensually. They are in the nature -- it does
8 seem to me, they are in the nature of settlement discussions,
9 and I don't want to do anything to impact on that by having
10 somebody prematurely sort of lay out what their position is.
11 Okay?

12 MS. BARRAGE: I understand, Your Honor. Well, with
13 that, I mean, I don't have anything further --

14 THE COURT: Okay. That's fine. Thank you.

15 MS. BARRAGE: -- on the pre-auction objections.

16 THE COURT: All right. Mr. Siegel, is there anything
17 you wanted to add?

18 MR. SIEGEL: Your Honor, I know --

19 THE COURT: Just make your appearance, Mr. Siegel.

20 MR. SIEGEL: Glenn Siegel, on behalf of Bank of New
21 York Mellon. We are one of the RMBS trustees. I'm with
22 Dechert.

23 Your Honor, I know better than to object to -- make an
24 objection -- I'll start again. I know better than to interrupt
25 proceedings, unless is pertinent.

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1 THE COURT: That's -- if you have a point you want to
2 make, Mr. Siegel, go ahead.

3 MR. SIEGEL: I'm sorry, very briefly. We have had
4 numerous discussions with the debtor. We are diligently trying
5 to resolve our objections. We are hopeful of resolving them.
6 We meet -- we're meeting fairly frequently, including today, on
7 this. I'm not sure we have the same level of optimism as the
8 debtor does about reaching as successful a conclusion, but we
9 certainly have the same desire they do to reach a conclusion.

10 THE COURT: Thank you, Mr. Siegel.

11 MR. SIEGEL: Thank you, Your Honor.

12 THE COURT: All right. Mr. Lee, what's next on --

13 MR. GOODCHILD: Excuse me, Your Honor. May I be
14 heard?

15 THE COURT: Quickly.

16 MR. GOODCHILD: Good morning, Your Honor. John
17 Goodchild; Morgan, Lewis & Bockius. I represent Deutsche Bank,
18 one of the RMBS trustees.

19 Your Honor, with respect to the proposal that was made
20 by the debtors to file their response to the pre-auction
21 objection on the 10th --

22 THE COURT: That's been the case all along.

23 MR. GOODCHILD: Yes, Your Honor. We would ask leave
24 to file a short reply.

25 THE COURT: Noon on the 12th.

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1 MR. GOODCHILD: Thank you, Your Honor. And --

2 THE COURT: Limited to ten pages.

3 MR. GOODCHILD: And, Your Honor, with respect to the
4 submission of the record in the event that the matter cannot be
5 resolved, we would propose the 3rd for an exchange of
6 information between the parties.

7 THE COURT: I'm sorry, I don't understand what you're
8 saying.

9 MR. GOODCHILD: Your Honor, it is our anticipation
10 that if the matter is to be litigated, there will have to be a
11 record. The precise provisions of the PSAs --

12 THE COURT: This is not going to be an evidentiary
13 hearing as it is scheduled currently. If, after I see all of
14 these papers, I conclude an evidentiary hearing is required, I
15 will enter appropriate orders thereafter.

16 MR. GOODCHILD: Thank you, Your Honor. Your Honor,
17 with the Court's permission, the group of lawyers representing
18 the RMBS trustees would like to be excused from the courtroom.

19 THE COURT: You certainly can.

20 MR. GOODCHILD: Thank you, Your Honor.

21 THE COURT: All right, Mr. Lee?

22 MS. COELHO: Your Honor, I'd just like to be heard on
23 the --

24 THE COURT: Could you --

25 MS. COELHO: -- status conference, Your Honor.

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1 THE COURT: -- identify yourself, please?

2 MS. COELHO: Sara Coelho; Weil, Gotshal & Manges. We
3 represent Syncora Guarantee Inc. Syncora is an insurer, and it
4 has insured some of the trusts that are subject to the sale.
5 We have some of the same objections that have been raised in
6 the trustees' objection. But because we're not part of the
7 settlement process, we were not part of the earlier objection
8 process. And I just wanted to stand up so that the Court and
9 the parties are not surprised that there are similar objections
10 out there that are not being addressed through these
11 discussions.

12 THE COURT: I'll deal with the objections when they
13 come in. This is not the hearing on it.

14 MS. COELHO: Okay, thank you.

15 THE COURT: Thank you.

16 Mr. Marinuzzi?

17 MR. MARINUZZI: Good morning. Lorenzo Marinuzzi,
18 Morrison & Foerster, on behalf of the debtors. I'm going to
19 cover the status conference on items 3, 4, and 5, dealing with
20 the consent order.

21 THE COURT: Yes, go ahead.

22 MR. MARINUZZI: Your Honor, the consent order, as the
23 Court is aware, is an order issued by the Federal Reserve Board
24 and the FDIC, dating back to April of 2011. It's a public
25 document. It's been referenced in every single order submitted

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1 by the debtors since this case began, at the insistence of the
2 Department of Justice.

3 THE COURT: I know I've read all or parts of it, but I
4 would appreciate it if you could send a copy of it to chambers
5 to I can have it as a standalone, and not search for it online.
6 Okay?

7 MR. MARINUZZI: We'll do that, Your Honor. We'll do
8 that. It's actually an exhibit to the motion to pay PWC.

9 Now, the consent order was signed by Ally Bank, AFI,
10 ResCap, and GMAC Mortgage. What it does is it establishes a
11 time frame and a framework for ResCap, GMAC Mortgage, AFI, and
12 Ally to address the alleged mortgage servicing and foreclosure
13 deficiencies that arose out of the mortgage crisis in
14 2008/2009.

15 THE COURT: May I ask this? Does the consent order
16 deal with issues arising to loan underwriting by Ally Bank, for
17 example? In other words, I -- look, I read all these papers.
18 Okay? And Mr. Schrock or his colleagues, in the last paper
19 that he filed on it, emphasizes a point I knew before, that the
20 consent order required the debtors to have his review process,
21 not AFI -- required the debtors.

22 The committee focuses on the fact that -- whether
23 these are the exact terms in the engagements or not --
24 essentially joint and several liability for payment of the
25 obligations to PricewaterhouseCoopers, Pepper Hamilton -- I

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1 can't remember the name of the other firm.

2 MR. MARINUZZI: Hudson Cook, Your Honor.

3 THE COURT: Hudson, right. Okay. What my question
4 focuses on is, the conduct that's being reviewed, is it solely
5 the conduct of the debtors, or does it include the conduct of
6 AFI and Ally Bank or any other nondebtor affiliates?

7 MR. MARINUZZI: Your Honor, it is mostly focused on
8 the debtors' servicing and foreclosure conduct. It does
9 include aspects of the review that pertain to oversight by the
10 parent. And I have a bunch of heads nodding behind me, so I've
11 accurately described it. But the focus is mostly on the
12 foreclosure and servicing activities of GMAC mortgage.

13 And, Your Honor, I don't know if you have any other
14 questions.

15 THE COURT: Well, to the extent that any review is
16 required with respect to AFI or Ally Bank or any other
17 nondebtor affiliates, has there been any effort to allocate the
18 costs of the review process among those entities, debtor or
19 nondebtor, for which review is to be conducted?

20 MR. MARINUZZI: Your Honor, prior to filing the
21 motion, I don't know the answer to that with respect to PWC.
22 It's been communicated to me by counsel for the parent, that
23 this is an obligation that belongs to GMAC Mortgage. We've
24 asked for contribution towards the amounts payable to PWC.

25 I can tell you that there are negotiations between the

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1 debtors and --

2 THE COURT: You can tell me that there are or are not?

3 MR. MARINUZZI: Are -- are -- regarding the costs to
4 be paid to a validation agent, which is another entity that
5 needs to be retained under the consent order. And it's -- I
6 don't want to get into discussions too deeply -- but it's based
7 on the allocated percentage of things that need to be validated
8 for the benefit of GMAC Mortgage versus things that need to be
9 validated by the validation agent for purposes of the parent.

10 THE COURT: So but is PWC, for example, is it supposed
11 to -- has it, in the past, will it -- is it currently, will it
12 in the future, undertake a review -- I'll use that term; it may
13 encompass more than review -- of activities of AFI and Ally
14 Bank and any other nondebtor affiliates in connection with the
15 work it's supposed to undertake?

16 MR. MARINUZZI: Your Honor, the expression --

17 THE COURT: I saw the an expression of exasperation --

18 MR. MARINUZZI: -- from counsel it's very complicated,
19 Your Honor. The focus of what PWC is supposed to be evaluating
20 and the various streams of review outlined in the consent order
21 are focused on servicing and foreclosure practices, what fees
22 were charged. They just are.

23 THE COURT: Well, let me ask you this. To the extent
24 that any of the work of PWC or any of the counsel assisting
25 focuses on nondebtor affiliates, why should the debtor be

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1 paying the freight?

2 MR. MARINUZZI: Your Honor --

3 THE COURT: I mean, first, I assume -- again, I am --
4 next question -- a question, whether it's next question is, I
5 can understand a certain amount of sticker shock when the
6 estimated cost rose from 180 million to 250 million. A lot of
7 money.

8 MR. MARINUZZI: Unquestionably.

9 THE COURT: But what's the basis for charging the
10 debtors for any review required by the consent order, review of
11 the nondebtor affiliates?

12 MR. MARINUZZI: Your Honor, I guess when you look at
13 the consent order, the consent order -- there's two different
14 things. There's the consent order and the obligations that are
15 imposed on the debtors by the Board of Governors of the Federal
16 Reserve. And then there is the obligation to pay PWC set forth
17 in the engagement letter. And I think we need to separate the
18 two. Because each presents different issues, although it
19 relates to the foreclosure review.

20 And the issue, as we see it, when we look at the
21 consent order, it says GMAC Mortgage must do the following.
22 And so we looked at the PWC engagement letter, and it says that
23 Ally and GMAC Mortgage are jointly and severally liable for all
24 obligations under the engagement letter.

25 THE COURT: Well, you know, if there's a 180 million

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1 or a 250 million dollar cost to what PWC is going to do, it
2 surprises me not in the least that PWC would want joint and
3 several liability among the parent and the debtors. No
4 surprise about that. Okay? It wouldn't matter whether it was
5 a bankruptcy or not. I mean, if they were going to do this
6 work, they want to be satisfied they're being paid.

7 So the fact of the joint and several liability for the
8 costs doesn't -- that part of the committee's argument doesn't
9 persuade me, just the fact that there is this joint and several
10 liability. My focus -- maybe it's wrong -- this is a status
11 conference, not the ultimate hearing on it -- but when I
12 reviewed the materials, which I've done, my reaction is that
13 here's a -- this is a consent order. The committee may think
14 it's -- I'm not sure what the committee thinks; whether -- they
15 say it -- I don't know whether it could be rejected. But they
16 seem to think this is a bad deal and the debtor shouldn't be
17 required to comply with the requirements of it.

18 How they do that, I don't know. But, okay, that's
19 what the co -- but there's a consent order. And let's assume
20 for the sake of discussion that it's enforceable and that the
21 committee can't just decide, I don't like it. Okay? That's
22 different, in my view, than saying who should pay for the
23 review. And if a portion of the review focuses on nondebtor
24 affiliates, why should the debtor be paying for it?

25 MR. MARINUZZI: Your Honor, I was handed two separate

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1 notes that say the same thing, so I think at least one of them
2 is correct. And the answer I got is that the PWC review is
3 only with respect to GMAC's and Residential Capital's
4 foreclosure and servicing process, not that of Ally. So that's
5 what PWC is doing. Whether it's the answer we all like or not,
6 that's the answer I was given by the client.

7 So we take Your Honor's comments to heart. And the
8 problem we have, and the reason we filed the motion is we have
9 a consent order that says we must do this. And we know that
10 not complying with the consent order is a bad thing, not just
11 according to the Fed and regulations, but also with respect to
12 our post-petition financing facilities and our asset purchase
13 agreement.

14 Now, what we did want to do -- and Your Honor granted,
15 we believed, authority in the GA servicing order, for us to
16 comply with our obligations under the consent order. This open
17 and notorious, a public document. We said it was expensive
18 from day one. It was in the Whitlinger declaration. It's not
19 a secret. And in the context of the dispute regarding the Ally
20 subservicing, which I'm sure Your Honor fondly remembers, we
21 said wait a second --

22 THE COURT: Or not so fondly.

23 MR. MARINUZZI: Not so fondly. We said wait a second.
24 If we pay eight, ten million dollars PricewaterhouseCoopers on
25 account of the post-petition services that they've invoiced,

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1 it's going to show up in a monthly operating report. We'll
2 tell the committee that we've done it. And then we're afraid
3 of allegations that we shouldn't have made the payment, should
4 have done more disclosure. And we said rather than face that
5 because it's a lose-lose situation; let's file a motion --

6 THE COURT: How much is in the DIP budget for this
7 expense?

8 MR. MARINUZZI: I don't remember specifically. But
9 I'm told it's sufficient for the projected expenses through the
10 closing of the sale.

11 THE COURT: Is there a line item in the DIP budget?

12 MR. MARINUZZI: Yes. There is. And our thought
13 process, Your Honor --

14 THE COURT: And what happens upon the closing of a
15 sale of the servicing platform?

16 MR. MARINUZZI: Our obligations under the consent
17 order to permit for the continuation of the foreclosure review
18 stand. We'll have access to the files to permit the review.
19 We would hope between now and the closing of the transaction
20 that given the costs of the foreclosure review versus the
21 projected remediation payments, that perhaps there'll be some
22 changes with respect to the consent order to allow for some
23 different solution to this.

24 But right now we're living in the world of what the
25 consent order requires us to do. And we filed the motion. And

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1 our thought process was pretty straightforward. We've got a
2 consent order that says we have to do this; if we don't, bad
3 things could happen. We have an engagement letter that says
4 joint and several liability. It doesn't say in accordance with
5 whatever PWC is doing for Ally, which may be nothing. It's
6 just joint and several.

7 So we said rather than risk noncompliance and
8 violating the terms of our other agreements, we are not
9 talking, in the short term, about a lot of money. We'll pay --

10 THE COURT: How much is PWC burning a month? I say
11 "burning", what's the burn rate?

12 MR. MARINUZZI: Your Honor, I understand the amount
13 that they're currently owed is eighteen million dollars. The
14 estimated monthly rate is about six or seven million dollars
15 per month. The law firms are significantly less than that.

16 And we said let's pay. Let's avoid trouble with the
17 Fed. Let's not put any risk on the sale or the DIP financing.
18 And you go through the thought process, and you say well,
19 they're not going to call a default with the sale happening.
20 And people want the sale to go forward, so they'll look the
21 other way if the Fed says we're going to issue a cease and
22 desist and require you to respond in thirty days as to why
23 you're not complying. But that puts a tremendous risk on the
24 process, if for example, the GSEs say well, we hear you're not
25 comporting with the requirement of the consent order, I want to

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1 look at this a little bit more closely.

2 Rather than risk that, we said we have contribution
3 rights; at least the right to make a contribution claim against
4 the parent for the cost, that we're preserving for everybody's
5 benefit. And so we can get through the sale. Whatever the
6 costs are under the consent order, they will be paid; the Fed
7 will be happy; the governmental agencies will be happy. And to
8 the extent that there is a contribution claim that we, the
9 committee on behalf of the estates, or any other third party
10 wants to assert against the parent, those rights are not
11 affected by our payment. We wanted to preserve those rights,
12 and that's what the proposed order would do.

13 And so we provided -- we told the committee since last
14 month, well before we filed the motion, that this is what we
15 intended to do. And we provided them with a draft or a
16 substantially final draft of the PWC papers on August 31st or
17 29th -- the last Friday in August. We filed it the following
18 Wednesday. And ten days later we get an extensive document
19 demand, basically asking for any and all communications and
20 documents concerning the consent order.

21 We had a meet-and-confer the following week. And it
22 is our intention -- and we understand that Ally was also served
23 with an extensive document demand mirroring ours -- our
24 intention to comply and try to provide them with documents
25 regarding the foreclosure proceeding.

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1 But, Your Honor, I want to be very clear on something,
2 and I conveyed this to committee counsel yesterday, I'm not a
3 regulatory attorney. I'm just a bankruptcy lawyer. But I
4 spoke with my regulatory team, and they have told me that there
5 are significant restrictions in the ability of a regulated
6 entity to provide to a third party that requests information,
7 information the board considers -- the board of the Federal
8 Reserve -- confidential and dealing with the regulatory
9 authority of the board.

10 And so what does that mean? Our regulators are
11 looking at that. But we were obligated under the CFR to advise
12 the board, which we did, of the document demand. We sent a
13 copy of document demand. Because ultimately, at the end of the
14 day, whatever documents we or the parent produce, the Fed is
15 going to have to agree that we can produce them. We'll ask the
16 Fed, recommend to the Fed, try to negotiate the best
17 confidentiality agreement we can with committee counsel, to
18 allow the process to go forward. But there are restrictions.
19 And everybody needs to understand them. And they're not
20 created by the debtors.

21 And, Your Honor, if I could approach with, just as an
22 example -- because I've never seen anything like this, Your
23 Honor, until my regulatory team told me about it. If I could
24 approach?

25 THE COURT: Okay.

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1 MR. MARINUZZI: Your Honor, what I've copied --

2 THE COURT: You've given Mr. Eckstein a copy?

3 MR. MARINUZZI: Yes, I'm handing them out. Your
4 Honor, what I've copied are the relevant provisions of
5 12 CFR 261.20 and -.23 And the provision that I just want to
6 focus on, just as an example, is found on the last page of the
7 attachment. It is on page 252. And it's 261.23 subpart (b).
8 and it says, "Unless the Board," which is the board of the
9 Federal Reserve, "has authorized disclosure of the information
10 requested, any person who has Board information that may not be
11 disclosed, and who is required to respond to a subpoena or
12 other legal process, shall attend at the time and place
13 required and decline to disclose or to give any testimony with
14 respect to the information, basing such refusal upon the
15 provisions of this regulation. If the court or other body
16 orders the disclosure of the information or the giving of
17 testimony, the person having the information shall continue to
18 decline to disclose the information and shall promptly report
19 the facts to the Board for such action as the Board may deem
20 appropriate."

21 THE COURT: What's the information?

22 MR. MARINUZZI: The information is the information
23 shared between the regulated entities and the Board of
24 Governors concerning the consent order. We've had preliminary
25 discussions with the General Counsel's Office of the Board of

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1 Governors, to try to understand how broadly that can be
2 interpreted. But that's a process. And our regulatory team is
3 working on it.

4 But I want to reiterate, Your Honor, we will do what
5 we can to provide documents to the committee in response to
6 their requests on the foreclosure review, but it's not
7 completely within our control. And I think that's what the
8 committee and the Court needs to understand.

9 THE COURT: Okay.

10 MR. MARINUZZI: Now, there were two objections to the
11 motion, Your Honor. Unless Your Honor has any questions on the
12 CFR; that's about the extent of my knowledge on it.

13 THE COURT: No, I don't have any other questions on
14 it.

15 MR. MARINUZZI: Your Honor, so there were two
16 objections filed, and they both point out the imbalance in the
17 cost. This is not a secret. We understand, it's expensive to
18 have the foreclosure review done by professionals that are
19 receiving a lot of money for remediation that seems to be much,
20 much smaller.

21 THE COURT: Let me ask this. I should say I read -- I
22 guess the better word would be -- I skimmed the publicly
23 released report of -- I don't know, what is it -- a monitor;
24 I'm not sure -- the monitor of the settlements. And I guess
25 what the five largest servicers -- your being the fifth --

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1 entered into a settlement with the Department of Justice, and
2 in your case with the Federal Reserve Board -- it's the same
3 settlement, isn't it?

4 MR. MARINUZZI: There's two different settlements.
5 There's the DOJ-AG settlement --

6 THE COURT: Okay.

7 MR. MARINUZZI: -- and then there's the consent order.
8 The DOJ-AG settlement is a separate document, and it requires a
9 different review.

10 THE COURT: All right. And this just relates to the
11 Federal Reserve Board --

12 MR. MARINUZZI: Correct.

13 THE COURT: -- consent?

14 MR. MARINUZZI: And the FDIC.

15 THE COURT: And are any of the other servicers a party
16 to a settlement with the Federal Reserve Board?

17 MR. MARINUZZI: Yes, Your Honor. There are, I think
18 thirteen or fourteen -- I'm sorry, three with the Fed and ten
19 with the OCC.

20 THE COURT: Okay. And with respect to the three other
21 consents with the Federal Reserve Board, do you know whether
22 they impose similar review requirements?

23 MR. MARINUZZI: They do, Your Honor. They do.

24 THE COURT: I mean, I'm not surprised, but I --

25 MR. MARINUZZI: They do, Your Honor.

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1 Your Honor, so here we are. And we've got an
2 outstanding document demand. We're going to do what we can to
3 comply. But the committee's proposal, which I read to say just
4 ignore the consent order, because the parent, since you're
5 jointly and severally liable, they'll wind up writing a check;
6 we've asked, they've said no -- to us, doesn't sound, as a
7 fiduciary, like the approach that we can take with respect to
8 these matters; because the Fed had been patient, but they are
9 losing their patience.

10 I have an e-mail from last night wanting a call today
11 after this hearing to see where we are. Not surprisingly.
12 They've been pushing us to pay PWC now for several weeks.

13 THE COURT: Well, let me ask you this. Shift the
14 subject a little. You referred to contribution arguments.
15 First, do you know whether -- is this also going to be a
16 subject of the examiner's review?

17 MR. MARINUZZI: Yes, it is, Your Honor.

18 THE COURT: I assume -- is the examiner's counsel
19 here? Somebody here for the examiner? Yes.

20 MR. MARINUZZI: And, Your Honor, they've requested
21 copies of whatever documents are produced. They'll get them as
22 well.

23 THE COURT: Okay. So just so the record notes, there
24 is someone who stood and identify them -- not by name, but
25 identified themselves as here for the examiner. So they're

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1 certainly cognizant of the discussion.

2 Okay, but go ahead. The examiner has requested what?

3 MR. MARINUZZI: Copies of whatever documents we
4 produce to the committee in response to their document demand.
5 And we've agreed to do that. To the extent the Fed says it's
6 fine for one, we imagine they'll say it's fine for both.

7 THE COURT: You know, I mean -- and I'll hear from the
8 committee in a minute, and I do want them to address this
9 issue. Because it does seem to me that let's assume that the
10 examiner concludes that -- I'm not using this as a term of
11 art -- let's assume the examiner concludes that it was
12 inappropriate for AFI and the debtors to enter into a consent
13 order that would appear to impose the full costs of the review
14 on the debtors, and let's assume the examiner concluded that
15 that potentially gives rise to a cause of action by the debtors
16 against, I don't know, AFI or others, for doing that.

17 There's nothing in what's proposed now that would
18 relieve AFI or anyone else from any claims that might exist
19 based on having entered into the consent. Is that correct?

20 MR. MARINUZZI: Not to my knowledge, Your Honor.

21 THE COURT: Have you asked AFI to acknowledge in
22 writing that in the event that the debtors make the payments
23 for the professionals who are going to do the review, that it's
24 without prejudice to any rights the debtors or creditors may
25 have to assert any claims or seek any contribution or recovery

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1 from AFI, in light of the payments that are made?

2 MR. MARINUZZI: Your Honor, we haven't asked them for
3 an acknowledgement, but the proposed form of order does, in
4 fact, do just that.

5 THE COURT: Well, it wouldn't be the first time that
6 an order a bankruptcy court had entered, that other parties
7 take a view that well, that's too bad. We're not debtors, and
8 therefore we're not bound by it.

9 Mr. Schrock, come on up.

10 MR. SCHROCK: Yes, Your Honor. Ray Schrock of
11 Kirkland & Ellis on behalf of AFI and Ally Bank. We don't have
12 an objection to that provision in the order.

13 THE COURT: So in other words, you'd be -- on behalf
14 of AFI and Ally Bank, you would be prepared to include a
15 provision that made clear that if the debtors make payments,
16 it's without prejudice to any rights or claims they may have
17 for contribution or otherwise against the nondebtor affiliates?

18 MR. SCHROCK: Yes, Your Honor. We think, frankly,
19 that's appropriate. We know that this is the subject of an
20 examination. We also know that making these payments has
21 always been contemplated.

22 THE COURT: Thank you, Mr. Schrock. Anything else,
23 Mr. Marinuzzi?

24 MR. MARINUZZI: No, Your Honor. Just the last point I
25 want to make is, as I mentioned, the Fed has been exceedingly

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1 patient with us in requesting that we make these payments. And
2 while we requested their consent to an adjournment, we never
3 got a formal reply.

4 THE COURT: Okay.

5 MR. MARINUZZI: I don't know what's going to happen
6 during our call today, what message is going to be conveyed by
7 in-house counsel for the Fed. Our intention is to have Your
8 Honor enter an order after providing discovery to the committee
9 and providing the same documents to the examiner.

10 But just to be clear. We may be forced by the Fed to
11 decide whether we're going to be held in contempt of the order
12 which triggers defaults under agreements, or start making
13 payments to PWC and reserving our rights. We'll do the best we
14 can to get in front of the judge if we get in that situation.
15 But it could happen without a lot of notice.

16 THE COURT: All right, thank you. Let me hear from
17 the committee.

18 MR. HOROWITZ: Good morning, Your Honor. Gregory
19 Horowitz from Kramer Levin on behalf of the creditors'
20 committee.

21 Your Honor, the committee has a number of issues with
22 the debtors' motion to pay PWC. And that's what this is a
23 motion to do. This is a motion to pay PWC. This is not a
24 motion to continue complying with the consent decree. I think
25 it's very important to make that distinction. We don't --

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1 THE COURT: PWC was retained before the bankruptcy or
2 not?

3 MR. HOROWITZ: They were retained before the
4 bankruptcy. The retention letter was a joint retention letter
5 by both the debtors and Ally. Yes, it did have the language
6 "joint and several". I heard Your Honor saying it doesn't
7 surprise you.

8 THE COURT: Are you surprised by that?

9 MR. HOROWITZ: No, it doesn't surprise me that PWC,
10 before entering into an engagement that would involve a very
11 significant -- I'd say enormous devotion of resources would
12 want --

13 THE COURT: So you believe that the joint and several
14 liability provision in the engagement letter is a separate
15 source of authority for you to argue that the debtor shouldn't
16 pay?

17 MR. HOROWITZ: Well, Your Honor, actually I think much
18 more important is the supplement to the consent decree that the
19 FDIC and the Fed entered into with Ally -- I'm sorry, the Fed
20 entered into -- the Federal Reserve entered into with Ally on
21 the eve of the bankruptcy.

22 Obviously -- first of all, Your Honor, it's important
23 to understand why it is that the Federal Reserve and the FDIC
24 were engaged in this investigation. They were engaged in this
25 investigation because Ally is a bank under --

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1 THE COURT: Look --

2 MR. HOROWITZ: -- their jurisdiction.

3 THE COURT: -- you agree that because of the
4 relationship of the debtors to AFI and Ally, that the Federal
5 Reserve Board had jurisdiction or has jurisdiction over the
6 debtors for this purpose?

7 MR. HOROWITZ: Absolutely. That was what I was
8 emphasizing. That the reason that the debtors were subject --

9 THE COURT: So when I read your papers, you say oh,
10 it's only because an affiliate is a regulated entity, they were
11 in this position. Well, you're in the position, because you're
12 in the position, okay?

13 MR. HOROWITZ: And --

14 THE COURT: The Federal Reserve Board has
15 jurisdiction.

16 MR. HOROWITZ: It does. And it is because it is
17 within the jurisdiction of the Federal Reserve Bank that Ally
18 is very concerned that the consent decree continue to be
19 complied with.

20 THE COURT: Well --

21 MR. HOROWITZ: The Federal --

22 THE COURT: -- I'm concerned about -- you know, when
23 the debtors enter into a consent decree with a federal
24 regulator, I'm concerned about compliance with it.

25 MR. HOROWITZ: I understand, Your Honor. On the eve

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1 of the bankruptcy, with the concern that the Federal Reserve
2 obviously had, that upon entering into the bankruptcy, the
3 debtors would not be able to continue to pay for PWC and the
4 other professionals to do the independent review, they clearly
5 approached Ally, because there's a supplemental agreement
6 that's entered into where Ally says, in the event that our
7 debtor affiliates are unable to pay and do not pay, we will
8 pay. There are dates set forth in there which can be waived at
9 the sole discretion of the Federal Reserve. Clearly they have
10 been waived to some degree, because it's 120 days, and that's
11 already been passed.

12 But at the moment that the Federal Reserve wants, they
13 can indicate to Ally this supplemental obligation is incurred.
14 You have to start paying PWC. The review will continue, as it
15 has been.

16 THE COURT: Okay, Mr. Horowitz --

17 MR. HOROWITZ: The debtors will continue to be --

18 THE COURT: -- tell me why, if the consent obligated
19 the debtors to conduct the review -- you agree it does,
20 correct?

21 MR. HOROWITZ: Yes, I do.

22 THE COURT: All right. If operating funds and the DIP
23 budget provide sufficient funds to do so, why should the debtor
24 be relieved of the obligation by this Court?

25 MR. HOROWITZ: Well, first of all, Your Honor, there

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1 was a small caveat in there. They did provide sufficient funds
2 up through the closing. It's a very small subset of the now
3 estimated 250 million plus that will be involved in this
4 process.

5 THE COURT: Okay. So let's assume up to that point at
6 least -- when is a closing likely to occur? Do you know?

7 MR. HOROWITZ: End of the year, Your Honor.

8 THE COURT: Okay. And --

9 MR. HOROWITZ: Or January. Sorry, I'm hearing
10 January --

11 THE COURT: Okay.

12 MR. HOROWITZ: -- in my other ear.

13 THE COURT: If there are sufficient funds available to
14 pay costs, at least through the closing, why shouldn't the
15 debtor have to do that?

16 MR. HOROWITZ: Well, I think, Your Honor, the question
17 is, is it an appropriate exercise of the debtors' business
18 judgment to make these payments when it is clear that the
19 consequences of not making these payments are that Ally will
20 make these payments and Ally --

21 THE COURT: Doesn't --

22 MR. HOROWITZ: -- will then --

23 THE COURT: -- the debtor have to comply with all
24 police and regulatory actions or orders? It has to -- what is
25 it, 28 U.S.C. 959, is that the section? I mean, it has to

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1 comply with law. It has to operate its business in compliance
2 with law. Compliance with law requires it to comply with the
3 consent order, isn't that true? Is that the -- it's 959; I
4 think it's 28 U.S.C.

5 MR. HOROWITZ: Your Honor, this does emphasize that
6 there are lots of factual issues. In fact, nothing in the
7 consent order obligates the debtors to pay PwC. It obligates
8 the debtors to do the review. It obligates the debtors to
9 retain --

10 THE COURT: They're required that they retain
11 professionals to do the review?

12 MR. HOROWITZ: -- independent professionals, but it
13 does not say anything about what the financial allocation of
14 obligations is as between the debtors and Ally Financial and
15 Ally Bank, which were also signatories to the consent decree
16 for complying with the consent decree. Your Honor asked --

17 THE COURT: That's why I asked the question earlier
18 whether the review that the professionals are conducting is of
19 the debtors or does it include a review of the nondebtor
20 affiliates, because I must say, if it includes work concerning
21 the nondebtor affiliates, I agree with you the debtor shouldn't
22 pay for that. But if it's -- I mean, the debtors were the loan
23 servicers.

24 MR. HOROWITZ: Well, there are two answers to that,
25 Your Honor. The first is it directly addresses the debtors'

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1 activity as loan servicers, and the reason it does so is
2 because those were activities that were done under the
3 supervision and control of their parent who was within the
4 jurisdiction of the Federal Reserve and FDIC.

5 The second answer is, Your Honor, it is my
6 understanding that at least a significant portion of the work
7 being done by PwC is reviewing work done on Ally loans, loans
8 in the Ally portfolio that were serviced by the debtors as
9 agent --

10 THE COURT: Does the --

11 MR. HOROWITZ: -- for Ally.

12 THE COURT: Does the work that's being done with
13 respect to Ally loans that are in the portfolio relate to the
14 servicing and foreclosure activity carried out by the debtors
15 with respect to Ally loans?

16 MR. HOROWITZ: It's my understanding that it does.

17 THE COURT: Okay. I mean, it doesn't -- Mr. Horowitz,
18 I'm not sure what's discoverable. I mean, it may be -- as I
19 say, it may be that the examiner will determine -- and that's
20 not the last word on it, but the examiner will determine that
21 there are potential causes of action that can be asserted
22 against the nondebtor affiliates based on agreements that
23 imposed the financial obligation on the debtors to retain
24 professionals to conduct the review. And if those causes of
25 actions exist or are identified they'll be prosecuted or

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1 resolved in some fashion.

2 But look, maybe it reflected an incomplete
3 understanding with respect to the servicing dispute that came
4 before me. There the issue was an agreement entered into --
5 part of the issue was an agreement entered into shortly before
6 the bankruptcy that imposed the indemnification obligation on
7 the debtors. We'll see how that shakes out at the end of the
8 day.

9 This seems to me to be different. Yes, the PwC and
10 the other professionals, not surprising to anybody, insisted on
11 joint and several liability for the costs. And it may be -- I
12 didn't look at the supplement to the consent decree; it may say
13 in the event the debtors can't pay, AFI will. But I've seen
14 nothing to suggest that AFI -- that, excuse me, that the
15 debtors can't pay, at least at this stage. And what I don't
16 want to see happen is every issue that comes up in this case,
17 as between the committee and AFI as to who bears a cost,
18 results in extensive discovery and therefore delay in resolving
19 issues that, at least on the face of the papers I read, didn't
20 seem all that difficult to me.

21 So what are the disputed issues of fact that you
22 see? And don't tell me that's what you want discovery for.
23 You don't get to go on a fishing expedition to look for
24 something.

25 MR. HOROWITZ: Okay. Thank you, Your Honor. I do

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1 want to suggest what the areas are that we need discovery on.

2 First, we need discovery on the negotiation of the consent
3 decree which was in our -- we believe was controlled entirely
4 by Ally. We have questions about the defensibility of the
5 consent decree. We have reasons to believe that it --

6 THE COURT: I'm sorry, the what?

7 MR. HOROWITZ: The defensibility of the consent decree
8 for the reasons that we were talking about.

9 THE COURT: What do you mean by that?

10 MR. HOROWITZ: Well, defensibility of entering into an
11 agreement that provides for payment; now it looks to be
12 approaching a third of a trillion dollars to professionals for
13 a benefit that --

14 THE COURT: And that's why I asked the question
15 whether the FRB's settlements with the other servicers for whom
16 they have exercised jurisdiction included similar obligations.

17 MR. HOROWITZ: I'm sorry, what's this?

18 Yes, I'm advised that each of the other agreements
19 that we have seen in the public record have imposed these
20 obligations on the parent company. The --

21 THE COURT: Well, when you say "impose the obligation
22 on the parent company" --

23 MR. HOROWITZ: The --

24 THE COURT: -- impose joint liability on the parent
25 company?

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1 MR. HOROWITZ: No, imposed in the first instance the
2 financial -- the burden of complying with the consent decree on
3 the parent bank company.

4 We also -- this leads to the second big issue which is
5 that we believe that there was an effort by the parent to
6 explicitly, in the consent decree, build in allocation of the
7 cost burdens, and in fact the regulators refused to go along
8 with that.

9 This supplemental agreement that was entered into on
10 the eve of bankruptcy, really, the significance of this is the
11 regulators coming in and saying: Bank, who is under our
12 jurisdiction, you need to assure us you're going to continue to
13 be in compliance with this consent decree, so you need to give
14 us explicit assurance that if you fail in your effort to get
15 the payments made out of this bankrupt subsidiary of yours,
16 you're going to continue to pay these professionals and
17 continue to comply with the consent decree, which is why, Your
18 Honor, I think I understand your concerns about getting
19 involved in every expenditure out of the estate. This is a
20 very large dollar --

21 THE COURT: Oh, it is.

22 MR. HOROWITZ: -- expenditure.

23 THE COURT: There was sticker shock when I saw
24 particularly the initial estimate and now the revised estimate
25 of what the cost is.

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1 MR. HOROWITZ: As has the committee. And on the other
2 side, we think especially by virtue of the supplemental
3 agreement, the sort of Cassandra warnings about being in
4 default under the consent decree are misplaced. It's clear
5 that there cannot be a situation where by virtue of taking our
6 time, appropriately investigating and litigating this, the
7 debtors will enter into default under the consent decree and
8 suffer adverse consequences.

9 So our factual issues are does the consent decree
10 indeed seek to place the financial burden on the debtors and
11 does it accomplish that, or to the contrary, did the parent
12 seek to accomplish that and fail to do so? The regulators are
13 indifferent as to who pays.

14 THE COURT: Well, let me ask you this. Do you agree
15 that all or substantially all of the review that is going to be
16 conducted by the professionals is of the activities or conduct
17 of the debtors in servicing loans --

18 MR. HOROWITZ: I think that's ab --

19 THE COURT: -- and foreclosure --

20 MR. HOROWITZ: -- absolutely essentially has to be the
21 fact, Your Honor. It is the debtors that performed the work.
22 The reason that they were subject to this inquiry and the
23 reason why the parent has obligations --

24 THE COURT: So why isn't --

25 MR. HOROWITZ: -- substantial ones --

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1 THE COURT: But --

2 MR. HOROWITZ: -- is because it was done under their
3 supervision and control.

4 THE COURT: Why isn't it appropriate for the debtors
5 to bear the costs of the review of its own -- of their own
6 activities?

7 MR. HOROWITZ: Because the reason that they were
8 forced to enter into this consent decree, the reason they were
9 the subject of the investigation by these entities is because
10 that work was done under the monitoring and control of their
11 bank parent.

12 THE COURT: No, it isn't. It may be that they had --
13 the Fed had jurisdiction over them because of it. You're
14 blaming the foreclosure crisis on AFI? You're saying that the
15 conduct of the debtors has nothing to do with all of the
16 pleadings I get about alleged robo-signing or whatever, none of
17 it established. You're saying that's all AFI --

18 MR. HOROWITZ: I --

19 THE COURT: -- because it didn't supervise the
20 activities closely enough and that the officers and directors
21 of the debtors aren't responsible for that?

22 MR. HOROWITZ: I'm sorry, Your Honor, I am not saying
23 that. As Mr. Marinuzzi pointed out, there were separate
24 investigations and obligations that the debtors were exposed
25 to --

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1 THE COURT: How much?

2 MR. HOROWITZ: -- from the --

3 THE COURT: What --

4 MR. HOROWITZ: -- the Justice Department.

5 THE COURT: So --

6 MR. HOROWITZ: And those are obligations --

7 THE COURT: Have you seen these CFRs that Mr.

8 Marinuzzi has pointed to?

9 MR. HOROWITZ: I have, Your Honor. I think that --

10 THE COURT: And what's your view?

11 MR. HOROWITZ: My view is that we do have to go
12 through the hoops. Actually, if you look at page 251 of the
13 handout --

14 THE COURT: Yes.

15 MR. HOROWITZ: -- it makes it clear that there is an
16 express provision -- this is under 262.22(a), the word "policy"
17 that "While the board" -- I'm starting five lines down, "While
18 the board will not normally disclose this information to the
19 public", going on, it makes it clear the board will consider
20 requests for disclosure. And while it's written in the
21 negative, it makes it clear they will authorize disclosure if
22 the person requesting the disclosure is able to show a
23 substantial need for the information --

24 THE COURT: And have you --

25 MR. HOROWITZ: -- and that that need outweighs the

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1 confidentiality.

2 THE COURT: Have you applied to --

3 MR. HOROWITZ: Here I --

4 THE COURT: -- the Fed?

5 MR. HOROWITZ: I'm sorry?

6 THE COURT: Have you made an application to the Fed?

7 MR. HOROWITZ: No, Your Honor. The debtors actually
8 only discussed -- raised this issue with us in writing
9 yesterday. They've given us the contact information and we're
10 going to take that up promptly.

11 THE COURT: Well, certainly, the Fed will make its own
12 decisions as to what it's going to do, but just so that it's
13 clear, this Court, assuming the Fed is prepared to permit the
14 release of information, the Court is prepared to limit
15 disclosure, attorney's eyes only, highly confidential,
16 additional bells and whistles, as appropriate.

17 MR. HOROWITZ: That's helpful, Your Honor, and we'll
18 make that point clear when we raise the -- when we make the
19 request.

20 I think for the purposes of today, Your Honor, the
21 main report I wanted to make is that we've made substantial
22 progress in discussions with the debtors and Ally over the
23 scope of discovery. We're not there yet, but we think we will
24 be. Ally, in a letter yesterday, advised us that they expect
25 to make substantially complete document production of what

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1 they're agreeing to produce -- we still have some disputes --
2 by October 8th. And we think that the appropriate thing to do
3 is to take up Ally's suggestion in their position statement
4 that the Court schedule a telephonic status conference by which
5 point, hopefully, the parties will have agreed on a scheduling
6 order to have this matter heard.

7 I believe that the committee is still likely to be
8 asking for an evidentiary hearing on this issue, but it's
9 possible after doing the discovery that this will be something
10 that would be taken up on papers and legal argument.

11 THE COURT: Mr. Marinuzzi, what's the status of the
12 professionals' work? Is it stopped? Are they --

13 MR. MARINUZZI: No, fortunately, the last information
14 we got is that PwC is continuing to work asking for payment.
15 They're putting pressure on the Fed, which is putting pressure
16 on us to release money to pay PwC. We didn't want to pay PwC
17 anything in the context of this hearing without being in front
18 of Your Honor first.

19 And like I said, we have a call scheduled tentatively
20 for 1 o'clock today with the Fed. I don't know what their
21 position is going to be. I don't know if anybody from the Fed
22 is listening in on this hearing. They've been very cooperative
23 with us thus far. I don't know how long we'll have their
24 cooperation.

25 But Your Honor, I did want to respond to just one or

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1 two points. We submitted, as Exhibit 10 to the motion on
2 Friday, the supplemental agreement that counsel for the
3 committee places a high degree of reliance on. And what I'd
4 want to point out from this is that it, again, ratifies that
5 paragraphs 3 and 4 of the consent order require GMAC Mortgage
6 to conduct an independent review, again, so there's no
7 misunderstanding about whose obligation it is.

8 THE COURT: Oh, it's just a question of who's paying
9 for it.

10 MR. MARINUZZI: Correct.

11 Second, it says that if ResCap commences bankruptcy
12 cases, which we've done, Ally will be secondarily liable for
13 the obligations to timely pay. And so to say that there could
14 never be a default under the consent order ignores the fact
15 that paragraph 3 says GMAC Mortgage. And to rely on that kind
16 of an argument when the Federal Reserve Board can assess, for
17 intentional violation of their order, fines of one million
18 dollars per day, and to assume that that provision will be
19 interpreted the same way by our DIP financing providers, by
20 Nationstar is, I think, asking a little too much.

21 That's all I have, Your Honor.

22 THE COURT: Look, let's just define who's going to
23 pay; whether you're going to pay or whether AFI's going to pay.
24 I don't want to hear -- NationStar shouldn't be particularly
25 worried about it. AFI can pay if you can't or if the Court

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1 somehow found that you shouldn't -- the debtors shouldn't be
2 paying the entire amount, that it should be split or whatever.

3 We've got a long agenda already on October 10th. This
4 is going to be added to the agenda. The committee hopefully
5 will come away from this hearing understanding I'm not
6 particularly moved by the position they've asserted in their
7 papers. I will entertain at the October 10th hearing; I'll see
8 what the schedule is that the parties have endeavored to reach.

9 I'll tell you, I'm tempted today, but I'm not going to
10 do it -- I'm tempted today to enter an order saying the debtors
11 are directed to make the payments to PwC and the other
12 professionals pending further order of the Court. This review
13 has got to go forward. In my view, the debtors need to comply
14 with the consent order. Nothing that I read in the committee's
15 papers convinces me otherwise. Maybe they think they could
16 have negotiated a better deal, but it's the deal that was
17 negotiated. It's a regulatory -- or a police and regulatory
18 enforcement matter.

19 MR. MARINUZZI: Your Honor, my understanding is there
20 wasn't a lot of negotiation anyway. The consent orders look
21 very much alike.

22 THE COURT: Well, look, it wouldn't be beyond AFI to
23 have endeavored to shift the entire financial burden of doing
24 this to the debtors. That, at least, is the allegation with
25 respect to the servicing agreement. So don't take my comments

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1 to suggest that there wasn't something inappropriate in AFI's
2 approach to the issue. It is a review of the debtors, though,
3 principally. Okay?

4 We'll take this up on the 10th and --

5 MR. MARINUZZI: And Your Honor, if the Fed runs out of
6 patience --

7 THE COURT: -- this needs to get resolved.

8 MR. MARINUZZI: -- we'll call chambers --

9 THE COURT: Okay.

10 MR. MARINUZZI: -- and request an emergency hearing.

11 THE COURT: Okay.

12 MR. MARINUZZI: Thank you.

13 THE COURT: All right. Who else wants to be heard?

14 MR. LIGHTNER: Good morning, Your Honor. Mark
15 Lightner from Cleary Gottlieb Steen & Hamilton on behalf of
16 Wilmington Trust, the trustee and the senior unsecured notes.

17 We hear you loud and clear, Your Honor. We filed a
18 limited objection, which I know that you've read. We raised
19 the two issues, and the one that we think that is still
20 outstanding is which debtor is obligated to perform under the
21 consent order and which debtor is obligated to pay for it. And
22 there's, we think, some conflation going on about who's
23 obligated. We use the term "debtors" generically to refer to
24 all of the debtors, but we would like to make it clear that it
25 is GMAC Mortgage, and GMAC Mortgage alone, that has committed

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1 itself under paragraph 3 of the consent order as well as the
2 engagement letter.

3 THE COURT: We'll take that up --

4 MR. LIGHTNER: Thank you.

5 THE COURT: -- when this is heard.

6 Okay, Mr. Marinuzzi?

7 MR. MARINUZZI: Your Honor, unless you have any other
8 questions --

9 THE COURT: I don't.

10 MR. MARINUZZI: -- on those matters, I'm going to cede
11 the podium to my partner, Norman Rosenbaum, for the status
12 conference on the Silmon litigation.

13 THE COURT: Okay. Mr. Rosenbaum, let me ask you --

14 MR. MARINUZZI: Your Honor, I'm sorry --

15 THE COURT: I'm sorry --

16 MR. MARINUZZI: -- Your Honor --

17 THE COURT: Mr. Mari --

18 MR. MARINUZZI: -- just I have to run to something
19 else. May I be excused?

20 THE COURT: You're excused, absolutely.

21 MR. MARINUZZI: Thank you.

22 THE COURT: Mr. Rosenbaum, I don't know whether you
23 saw this morning -- I had it posted to ECF. You may not have
24 seen it yet. I received a letter from Judge Nicole Still on
25 September 25th, 2012, relating to the Silmon matter. I was out

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1 yesterday so it didn't get posted until this morning. I had it
2 posted to ECF. Did you get chance to see it?

3 MR. ROSENBAUM: I have, Your Honor.

4 THE COURT: Okay. All right. Go ahead, Mr.
5 Rosenbaum.

6 MR. ROSENBAUM: Well, Your Honor, as --

7 THE COURT: Let me ask, is counsel for Ms. Sil -- I
8 don't know whether it's Ms. or Mr. Silmon on the phone?

9 MS. HOOD: This is Rhonda Hood. I'm appearing for Mr.
10 Silmon.

11 THE COURT: All right. Thank you very much.
12 Go ahead, Mr. Rosenbaum.

13 MR. ROSENBAUM: And just to confirm, Mr. Patterson is
14 also on the line.

15 THE COURT: Okay. All right. Thank you.

16 MR. ROSENBAUM: Your Honor, as you directed at the
17 prior status conference, we did -- parties did meet and confer
18 on a process forward and subsequently appeared before Judge
19 Still on a status conference. And I believe all parties under
20 the auspices of Judge Still did agree to a way forward which
21 would allow for summary judgment on GMAC's motion to go forward
22 on all counts. The Silmons could defend on all counts. If the
23 judge granted summary judgment, that would conclude the matter.
24 If the judge found against GMAC and summary judgment but did
25 not permit for additional discovery, the matter would go to

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1 trial. And GMAC is prepared to stipulate --

2 THE COURT: Okay.

3 MR. ROSENBAUM: -- to relief from the automatic stay
4 on that basis.

5 The only issue that remains is if Judge Still finds
6 that additional discovery is permitted as a basis to deny the
7 summary judgment motion, then the Silmons would be entitled to
8 take discovery. But we're not prepared at this point to
9 stipulate to that relief from the automatic stay. We believe
10 that'd be a fairly expensive process. That's what was
11 presented before Judge Still and it's an acceptable way forward
12 for the debtors.

13 The parties are here to answer any other questions you
14 might have about the status of the litigation.

15 THE COURT: Well, let me hear from Mr. Silmon's
16 counsel on this issue.

17 MS. HOOD: Your Honor, on the summary judgment,
18 there's an affidavit that was filed, but the discovery itself
19 for the case is closed. So I wanted to make sure that the
20 Court wasn't misled in any way. But because the affidavit is
21 filed we will be filing a 56(f) motion to ask for relief from
22 the Court to take the deposition of the deponent -- I mean, of
23 the affiant that filed the affidavit on behalf of GMAC. And of
24 course Judge Still brought to your attention that part of the
25 issue is the ownership of this note.

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1 So the problem is, is we were trying to stipulate to
2 that, but we can't -- we don't really know how far that
3 discovery's going to have to go if Judge Still allows us to do
4 that. And so I need some guidance from the Court. The
5 stipulation asks -- the stipulation that they provided to us
6 says that if she grants that relief to us, pursuant to Rule
7 56(f), that we would then seek -- then we wouldn't have to come
8 back to the Court and file a motion for relief from the
9 automatic stay. And I'm not sure that I understood that from
10 the Court's direction or if we could just come back and seek
11 your guidance, or do we actually have to file --

12 THE COURT: Well, let --

13 MS. HOOD -- for relief?

14 THE COURT: Let me ask you this. Is all you're asking
15 for, in the event that Judge Still denies the motion because
16 she thinks that you should be allow to take the deposition, is
17 the only thing you're asking for is to take the deposition of
18 the affiant?

19 MS. HOOD: The problem -- I can't answer that
20 question. It depends on what we get from the affiant. If they
21 say, well, I can't answer that and you've got to get that
22 information from here; I'm not exactly sure where that's going
23 to lead.

24 THE COURT: Well, let me stop you there.

25 MS. HOOD: Yes, sir.

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1 THE COURT: Judge Still will have to decide. I don't
2 want to do anything to affect how Judge Still proceeds. The
3 question that she asks in the letter, and I appreciated her
4 raising it, was if she denies the motion and thinks that there
5 needs to be more discovery, how we proceed.

6 And let me -- I'm going to truncate this to this
7 extent. I'm not inviting the deposition of the affiant, but I
8 am indicating on the record that I'm lifting the stay to permit
9 Mr. Silmon's counsel to take the deposition of the affiant if
10 Judge Still believes that's required or appropriate.

11 With respect to any discovery beyond the affiant, Mr.
12 Silmon's counsel is going to have to raise with this Court,
13 either get an agreement from the debtors' counsel -- because
14 look, this matter was -- it's your summary judgment motion, the
15 debtors'. Judge Still -- and I reported this in the last
16 hearing -- Judge Still had discussed with me not what she was
17 going to -- she didn't indicate in the slightest how she was
18 going to rule on the summary judgment motion, but she just laid
19 out for me her concern with the counterclaims and the
20 affirmative defenses raising essentially the same issues.
21 Given that the trial hasn't occurred yet, but it is close to
22 being trial-ready, and I think that Judge Still should be
23 permitted, to the extent it doesn't seriously interfere with
24 what's going on in this case, to do her job, and that's what
25 she's trying to do. It's on your motion -- it's on the

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1 debtors' motion to recover possession of the property.

2 This is not something that Mr. Silmon invited. It
3 arises because you've brought -- you, GMAC, has brought an
4 action to recover possession. That's fine. I have no
5 questions about that. So, you know, counsel in the case can
6 certainly report back to Judge Still that she ought to go ahead
7 and sign the motion if she concludes that a deposition of the
8 affiant is appropriate. I'm lifting the stay on the record,
9 I'm indicating that the Court has lifted the stay to permit
10 that to go forward.

11 You ought to -- if that doesn't resolve all the
12 discovery issues, the debtors' counsel who's handling the case,
13 in conjunction with you Mr. Rosenbaum, ought to see whether you
14 can resolve by stipulation. I mean, it sounded to me that
15 substantially all the discovery is done. If there are a couple
16 odds and ends see if you can resolve it, okay, by stipulation.
17 Present the stipulation -- if the stay has to be lifted beyond
18 just the one deposition, see if you can resolve it by
19 stipulation. If not, you'll have to bring it back to me.
20 Okay?

21 MR. ROSENBAUM: That's fine, Your Honor.

22 Just to clarify, the one thing that we do need to do
23 is just present the stipulation and we'll make the necessary
24 modifications to the order --

25 THE COURT: That's fine.

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1 MR. ROSENBAUM: -- just to allow everything to go
2 forward.

3 THE COURT: I appreciate that.

4 MR. ROSENBAUM: Thank you, Your Honor.

5 THE COURT: Are you satisfied with that as well,
6 counsel for Mr. Silmon?

7 MS. HOOD: Yes, sir.

8 THE COURT: Okay. All right. Thank you very much.

9 UNIDENTIFIED SPEAKER: Thank you, Judge.

10 MR. MARINUZZI: For the record, Lorenzo Marinuzzi,
11 Morrison & Foerster.

12 Your Honor, that brings us to our contested matters,
13 the first of which, I think, is relatively short and won't take
14 much time. Then, I think, the remaining ones will take some
15 time.

16 THE COURT: Well, let me just -- to -- this isn't
17 going to cut much time off, but with respect to number 5 on
18 your agenda, Mr. Hopper's motion to reconsider, earlier this
19 morning I entered an order, it's ECF docket 1600 denying the
20 motion.

21 MR. MARINUZZI: Thank you.

22 THE COURT: Our local rules do not -- the only
23 circumstance in which a hearing is required is if -- on a
24 motion for reconsideration is when the Court requests it. I
25 concluded it was unnecessary, and I entered a written order.

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1 Okay. Let's start with the contested matters.

2 MR. MARINUZZI: Sorry. Okay. Your Honor, Mr.

3 Eckstein asked if we could go out of order and address the two
4 committee retention applications that are --

5 THE COURT: Sure.

6 MR. MARINUZZI: -- at the end of the agenda, since the
7 professionals are on the phone.

8 THE COURT: Okay. We can do that.

9 MR. MARINUZZI: That's fine.

10 THE COURT: Go ahead, Mr. Eckstein. Are you going to
11 have one of your colleagues do it? Go ahead.

12 MR. ECKSTEIN: Mr. Zide's going to handle it.

13 THE COURT: Okay.

14 MR. ZIDE: Good morning, Your Honor. Stephen Zide
15 from Kramer Levin --

16 THE COURT: Thank you, Mr. Zide.

17 MR. ZIDE: -- on behalf of the committee.

18 THE COURT: Okay.

19 MR. ZIDE: The last two matters on the uncontested
20 part of the agenda are the retention applications by the
21 creditors' committee for --

22 THE COURT: Well, it's on the contested part of the
23 calendar but --

24 MR. ZIDE: I thought it was the --

25 THE COURT: You're right, it is on -- it is shown as

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1 uncontested. I'm sorry.

2 MR. ZIDE: Yeah, there were no objections.

3 THE COURT: It was moved to the end. Okay. I thought
4 there was a limited objection that had been filed.

5 MR. ZIDE: There had been nothing.

6 THE COURT: Okay.

7 MR. ZIDE: We had previewed both of them with the
8 debtors --

9 THE COURT: That's fine.

10 MR. ZIDE: -- and the U.S. Trustee. And if Your Honor
11 has any questions?

12 THE COURT: No. Just bear with me just a second,
13 okay? This is the committee's application to retain Analytic
14 Focus LLC and J.F. Morrow as consultants to the committee.

15 MR. ZIDE: Yes.

16 THE COURT: And potentially expert witnesses, correct?

17 MR. ZIDE: Yes.

18 THE COURT: Mr. Masumoto, does the U.S. Trustee have
19 anything it wants?

20 MR. MASUMOTO: No objection, Your Honor.

21 THE COURT: All right. Anybody else have anything
22 they want to raise?

23 All right. Those motions are granted.

24 MR. ZIDE: Thank you, Your Honor.

25 THE COURT: Thank you very much, Mr. Zide.

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1 MR. ZIDE: Thank you.

2 THE COURT: Mr. Marinuzzi?

3 MR. MARINUZZI: Thank you, Your Honor.

4 That brings us to item 1 under contested matters, on
5 page 9, which is the debtors' application, under Section 363
6 authorizing reimbursement of expenses incurred by independent
7 members of the debtors' board.

8 THE COURT: This is where the committee did file a
9 limited objection.

10 MR. MARINUZZI: They did file a limited reservation of
11 rights.

12 THE COURT: A reservation of rights.

13 MR. MARINUZZI: And just a very brief history. The
14 boards established special committees to look at affiliated
15 transactions and also to evaluate the pre-petition settlement.
16 Those agreements are the subject of the examiner's review. The
17 independent board members are being interviewed. We think it's
18 appropriate for them, as it was the case in the past, that they
19 have their attorneys' fees reimbursed.

20 In addition, as we get to the sale transaction I'm
21 sure there are going to be issues that we're going to want an
22 independent -- the independent board members to evaluate, and
23 they'll do so with counsel, and we would like to be able to
24 continue to pay counsel.

25 THE COURT: It's a single counsel, Morrison Cohen firm
eScribers, LLC | (973) 406-2250
operations@escribers.net | www.escribers.net

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1 representing the independent directors, is that correct?

2 MR. MARINUZZI: They're representing the current
3 independent directors, but what we've built into the motion is
4 a little bit of a 327 procedure, they're going to be subject to
5 the fee order.

6 THE COURT: Even though they're not representing the
7 debtor --

8 MR. MARINUZZI: Correct.

9 THE COURT: -- you've built in the review procedure?

10 MR. MARINUZZI: Correct. That's right. And to the
11 extent any former independent member or even current
12 independent board member decides they want different counsel,
13 we'd expect them to comply with the procedures as well. Their
14 fees would be subject to review by the committee, the U.S.
15 Trustee, and the Court.

16 THE COURT: All right. Does somebody from the
17 committee want to be heard? Mr. Mannal?

18 MR. MANNAL: Your Honor, Doug Mannal from Kramer Levin
19 on behalf of the committee.

20 Your Honor, we had asked for certain information
21 regarding historical payments made to Morrison Cohen. We've
22 received that information and have no objection based on the
23 review that we're going to receive regarding Morrison Cohen's
24 fee applications.

25 THE COURT: All right. Mr. Masumoto?

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1 MR. MASUMOTO: No objection, Your Honor.

2 THE COURT: All right. The motion to retain Morrison
3 Cohen or to approve the -- authorizing the reimbursement, it's
4 not retaining, because it's authorizing reimbursement of fees
5 and expenses for Morrison Cohen as counsel to the independent
6 directors is granted.

7 MR. MARINUZZI: Thank you, Your Honor.

8 That brings us to the motion for the appointment of a
9 borrowers' committee. I don't know if Your Honor wants to take
10 a break or wants to go straight into it.

11 THE COURT: Let's take a ten minute recess. But
12 here's -- I'm going to ask -- let me put this question out to
13 you right away, the whole much longer than I anticipated
14 discussion about paying the costs of the review to comply with
15 the consent order, why doesn't that really say that's why there
16 needs to be a homeowners committee? I mean, the committee,
17 which is strenuously fighting the expenses of conducting the
18 loan servicing and foreclosure review, how can they adequately
19 represent the interests of all of the homeowners? I'm using
20 the term homeowners, but a lot of them don't own homes anymore
21 because they were foreclosed. Many of them have wrongful
22 foreclosure actions, we have a whole variety of things. Every
23 -- virtually every one of our omnibus hearings has had a large
24 number of lift stay motions, other things relating specifically
25 to issues relating to foreclosure, et cetera.

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1 So let's take a ten minute break. And I must say when
2 I prepared for today my initial reaction was no committee. And
3 then, the more I thought about it, and particularly took --
4 thought about it in relation to the arguments -- I understand
5 your view on it, they'll pay the consultants, but I -- you
6 know, there's no one really looking out for -- no committee
7 that really has the interests of the homeowners.

8 And one of the things I asked Mr. Masumoto when we
9 addressed this is, what I don't want to do is have an unlimited
10 budget for a committee and its professionals, but I'm concerned
11 that there is no organized voice for them. We'll take a ten
12 minute recess.

13 (Recess from 11:30 a.m. until 11:42 a.m.)

14 UNIDENTIFIED SPEAKER: Your Honor, just one moment.
15 Mr. Eckstein and I need to leave for another meeting, so we're
16 going to hand it over to Mr. Marinuzzi.

17 THE COURT: Okay. You're excused.

18 All right. Mr. Rosenbaum, you're going to pick up?

19 MR. ROSENBAUM: Your Honor, just one matter out of
20 order, number 3 on the contested matter agenda. We'll just
21 deal with it very quickly. This was the debtors' motion for
22 approval of procedures for holders --

23 THE COURT: Yes.

24 MR. ROSENBAUM: -- of senior liens.

25 THE COURT: Okay. You were trying to work this out

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1 with Mr. Teitelbaum?

2 MR. ROSENBAUM: Yes, that's the only objection we
3 received. We've been in discussions. We're hopeful we can
4 resolve the objection, if not we would notice it for a hearing
5 and we would respond, but we're hopeful we'll get there.

6 THE COURT: Okay.

7 MR. ROSENBAUM: I just wanted to report that to the
8 Court.

9 THE COURT: All right. So we'll adjourn the matter,
10 and it can get reset.

11 MR. ROSENBAUM: Thank you.

12 THE COURT: Okay. Thank you.

13 UNIDENTIFIED SPEAKER: Thank you, Your Honor.

14 THE COURT: Mr. Marinuzzi, let's take up the Corla
15 Jackson matter. Is Ms. Jackson on the phone or in the court?

16 MR. MARINUZZI: That's fine, Your Honor.

17 THE COURT: I thought I had heard some indication that
18 she was here or on the phone? No?

19 MR. MARINUZZI: I'll let Aaron Klein, from my office;
20 address the motion, Your Honor.

21 THE COURT: Okay.

22 MR. KLEIN: Thank you, Your Honor. Aaron Klein from
23 Morrison & Foerster for the debtors.

24 Since Ms. Jackson is not here and it is her motion, if
25 you'd like me to address the debtors' position or do some

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1 explaining about what our thoughts are on it, or if you just
2 have questions.

3 THE COURT: Well, I understand from my chambers that
4 Ms. Jackson called rather irate, because the Court entered an
5 order denying her motion to adjourn everything, not just her
6 motion but, at least as I read she filed two motions, the one
7 that's ECF docket 1229, which -- to address stay violations,
8 but she filed a separate motion to adjourn everything scheduled
9 for today, and I promptly entered an order denying that motion.
10 She was, apparently, irate that she didn't know about it. I
11 think at some point she seems to have learned about it, but in
12 any event --

13 MR. KLEIN: I can empathize with Your Honor and your
14 chambers.

15 THE COURT: Well, I think, you know -- but no, in all
16 seriousness Ms. Jackson is pro se.

17 MR. KLEIN: Right.

18 THE COURT: And she doesn't have access to ECF. The
19 order was filed on ECF. I guess what I would ask, if this
20 issue arises in the future, that if I enter an order involving
21 a pro se litigant, if the motion was addressed to the debtors
22 as opposed to other third parties, the debtors should endeavor
23 to provide a pro se litigant, Ms. Jackson or anyone else, with
24 notice if I enter an order before a hearing. It was just -- I
25 mean, I -- enough said on that. Go ahead.

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MR. KLEIN: Your Honor, we're happy to do that.

Our view of, and we're talking about the order that you did not deny, the docket number 1229, we put in papers and the debtors' position is that these papers that she put in, that Ms. Jackson put in, are procedurally deficient.

We were having difficulty in reading it, discerning what relief she was seeking, what legal claims and what facts would entitle her to any relief. We didn't know if she was seeking injunctive relief, equitable relief, monetary damages. Whatever type of relief she was seeking, number one, we think that given the fact that she is pro se and that we may provide wide latitude to pro se litigants, these court's rules and the Bankruptcy Rules require pleading with particularity so that the Court, and the opposing counsel, and the party who's on the other end of that motion would understand what the allegations are, what the facts are, and what legal theories support awarding some relief.

So we think that, as a preliminary matter, that the motion should be denied based upon procedural deficiencies based on Bankruptcy Rule 9013 and the local rules of this court, 9013-1.

THE COURT: Let me just, for the purposes of the record, in addition to the motion we're talking about, which is ECF 1229, I indicated Ms. Jackson filed a motion seeking to adjourn all hearings scheduled for September 27th, that was ECF

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1 1517, and the motion was denied, and the written order is ECF
2 docket number 1549.

3 Ms. Jackson previously filed a motion pursuant to
4 Section 362(d), Bankruptcy Rule 4001 and Local Bankruptcy Rule
5 4001-1 to lift the stay in order to pursue an action she filed
6 and is pending in Alabama State Court. Her -- that prior
7 motion was ECF docket number 856. That motion was denied in a
8 written opinion and that's at ECF number 1184.

9 The Court obviously has reviewed this latest motion,
10 ECF 1229, and I'm not -- I don't know what she's really
11 seeking, but I do have some questions for you, Mr. Klein.

12 MR. KLEIN: Absolutely.

13 THE COURT: In the pile of papers she filed --

14 MR. KLEIN: Uh-huh.

15 THE COURT: -- it indicates she had, what, at least
16 two Chapter 13 proceedings in Alabama?

17 MR. KLEIN: Actually three, Your Honor.

18 THE COURT: Three. Are all disposed of?

19 MR. KLEIN: Yes, Your Honor. All are disposed of.
20 The first one was filed in 2005, and it was -- it was closed
21 about 2010. The second one she filed a few months afterwards
22 and that was -- that was closed -- that was dismissed, because
23 she didn't comply with the Chapter 13 plan in the previous
24 bankruptcy, which provided for, among other things, payment on
25 the loan to GMAC.

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1 THE COURT: Let me ask you this.

2 MR. KLEIN: Yes.

3 THE COURT: GMAC completed a non-judicial foreclosure
4 of Ms. Jackson's home, is that correct?

5 MR. KLEIN: That's correct, Your Honor.

6 THE COURT: And did the non-judicial foreclosure of
7 her home occur when there was a pending Chapter 13 case?

8 MR. KLEIN: No, Your Honor.

9 THE COURT: Because she seems -- you know, she's
10 complaining about stay violations, there's no stay violation
11 from any order in this case, but she seems to be suggesting
12 that the foreclosure took place while she had a pending Chapter
13 13 case. Can you give me the chronology?

14 MR. KLEIN: Yes I can, Your Honor, and let me clarify
15 that -- let me give you the chronology first. So she filed her
16 first Chapter 13 case --

17 THE COURT: Thirteen.

18 THE COURT: -- in 2005. She also filed a Chapter 13
19 plan which provided for payment for continued post-petition
20 payments and payment of arrearages for secured lenders. GMAC
21 was a secured lender. GMAC was a servicer, actually, under her
22 loan, it was owned by Option One. In 2008, Option One assigned
23 the loan to GMAC Mortgage.

24 In 2010 that first Chapter 13 case was closed. She
25 received a discharge except with respect to certain items like

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1 the GMAC loan. She filed the second case in October -- so that
2 was January 2010 when it closed. She filed a second case in
3 October of 2010, and then that was dismissed in December of
4 2010, just a few months later, for failure to abide by the
5 requirements that she continue to make payments pursuant to the
6 Chapter 13 plan.

7 So this brings us, now, to October of -- or, I'm
8 sorry; in April 2011 she filed her third Chapter 13 case. GMAC
9 moved for relief from the stay based on missed payments and her
10 loan was in -- Ms. Jackson's loan was in default. In October
11 of 2011 -- and the way the court disposed of that, by the way,
12 that motion for relief from stay was to say we're going to
13 conditionally deny it based upon you, the debtor, Ms. Jackson,
14 meeting certain requirements, one of which is to pay the
15 arrearages and bring the loan current; and two, that she would
16 continue to make timely payments on the rest of the balance of
17 the loan.

18 It also specifically provided for GMAC to be able to
19 send her notices of default and upon -- for which she could
20 cure within ten days. But if she didn't cure those loans --
21 those defaults, then the order specifically said that the
22 automatic stay with respect to the property and the interest
23 that GMAC had in the property was lifted so that GMAC could
24 exercise any remedies against that, including foreclosure.

25 THE COURT: Without further order of the court?

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1 MR. KLEIN: Without further order of the court, that's
2 a very important part. Thank you.

3 So after continued missed payments and notices of
4 default, in October of 2011, GMAC filed a motion -- a notice of
5 the termination of the stay based upon that conditional order
6 and notified everyone, including the debtor, of its intent to
7 foreclose. Subsequent to that Ms. Jackson moved to reimpose
8 the stay as to GMAC, but the bankruptcy court -- the Alabama
9 Bankruptcy Court denied that motion.

10 THE COURT: Do you know who the judge was? Was it
11 Judge Bennett?

12 MR. KLEIN: I have that in my -- I'm actually not
13 sure --

14 THE COURT: Okay.

15 MR. KLEIN: -- who the judge was. If you could give
16 me one second?

17 THE COURT: Sure.

18 MR. KLEIN: Judge Mahoney was the --

19 THE COURT: Okay.

20 MR. KLEIN: -- was the first one, but I don't have
21 that judge's name.

22 THE COURT: All right. Okay. Go ahead.

23 MR. KLEIN: So --

24 THE COURT: When did she file the motion to reinstate
25 the stay?

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1 MR. KLEIN: In December of 2011.

2 THE COURT: Okay.

3 MR. KLEIN: And then the court subsequently denied
4 that motion.

5 THE COURT: When was that?

6 MR. KLEIN: That was in January of 2012.

7 THE COURT: Okay.

8 MR. KLEIN: And that's the same month where she filed
9 a lawsuit in Alabama State Court, which was then subsequently
10 removed to Alabama Federal Court alleging fraud and a myriad
11 number of other allegations against the debtors.

12 THE COURT: So the motion to reinstate the stay was --
13 well, arguably there was no stay since October 2011.

14 MR. KLEIN: That's correct, Your Honor. So --

15 THE COURT: When did the foreclosure occur?

16 MR. KLEIN: In June of this year.

17 THE COURT: June 2012?

18 MR. KLEIN: Yes, sir. And she is still in the
19 premises. Eviction proceedings have not been initiated.

20 THE COURT: All right.

21 MR. KLEIN: So when I said earlier, let me clarify,
22 that the Chapter 13 case may still be going on, but the
23 automatic stay has been lifted --

24 THE COURT: Okay.

25 MR. KLEIN: -- with respect to GMAC.

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1 THE COURT: So I think we've seen the October 2011
2 notice to terminate the stay, but do I have the order?

3 MR. KLEIN: There is no order that was entered on the
4 court -- the court's docket. There was an order stating that
5 the stay would be -- I'm sorry; let me ask you, you're asking
6 specifically about the order denying her motion to reimpose the
7 stay?

8 THE COURT: No, really the order that conditionally
9 denied the motion but included these cure -- you know, had the
10 notice -- the provisions for automatically lifting the stay in
11 the event, you know, she didn't remain timely, and you filed a
12 notice?

13 MR. KLEIN: I think we included that as an exhibit --

14 THE COURT: Okay.

15 MR. KLEIN: -- the motion. If you'd like I can point
16 it out to you.

17 THE COURT: We'll go back and look -- I'll go back and
18 look at it.

19 MR. KLEIN: Okay.

20 THE COURT: Okay. All right. The Court is going to
21 deny Corla Jackson's latest motion, I'm not quite sure how to
22 denominate it. She's seeking to have this Court, apparently,
23 determine that GMAC violated a stay in her Chapter 13 case,
24 which is not pending before me and thereafter sold her home
25 through fraudulent and illegal means. Her motion is at ECF

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docket number 1229.

I already recited the prior motion activity and the Court's prior opinion with respect to denying her motion to lift the stay.

This motion, the current motion, does not clearly set forth the relief that Ms. Jackson is seeking from this Court or any basis for the Court to grant any relief to her in any event, and it appears that the non-judicial foreclosure of her home took place at a time when no stay was in effect in any then pending Chapter 13 case.

Additionally, what was true at the time that I issued the last opinion, Ms. Jackson remains in possession. Even when GMAC commences a proceeding to evict her she can assert whatever defenses are available to her under Alabama law. Just a brief written order will be entered by the Court denying her motion for the reasons stated on the record.

Thank you, Mr. Klein.

MR. KLEIN: Thank you, Your Honor. I'm going to turn the podium --

THE COURT: And when that order is entered --

MR. KLEIN: I will --

THE COURT: -- please send it to her.

MR. KLEIN: We will absolutely, and I'll make sure it happens.

THE COURT: Thank you.

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1 MR. KLEIN: I'm going to turn the podium back over to
2 my colleague --

3 THE COURT: Thank you.

4 MR. KLEIN: -- Mr. Marinuzzi.

5 MR. MARINUZZI: Thank you, Your Honor. That brings us
6 back to the motion to appoint a borrower's committee.

7 When we broke Your Honor asked the question about why
8 there shouldn't be a borrower's committee, and it's obviously
9 not our motion, and I'm sure the movant will explain to the
10 Court the rationale. But where I continue to scratch my head
11 is to understand what the borrower's committee would be doing.

12 There are allegations about the foreclosure process
13 and not having the information they would like to have readily
14 available to them. Also, I believe I read in the motion some
15 endeavor to investigate claims that borrowers might have
16 against certain financial institutions on the committee. I'm
17 not sure that that's something a borrower's committee should be
18 doing or we should be paying for. So I would just ask the
19 movant to express --

20 THE COURT: Let me hear the moving party.

21 MR. MARINUZZI: All right. Thank you.

22 THE COURT: Who's going to speak for the moving party?

23 MR. BROWN: Robert Brown from Robert E. Brown, P.C.
24 for the homeowner movants.

25 Your Honor, I'd like to introduce my co-counsel in

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1 this matter, which is Bennett Kramer from Schlam Stone who
2 joins in the application, but I'm going to be making the
3 presentation to the Court.

4 THE COURT: Go ahead.

5 MR. BROWN: Your Honor, if not now, when?

6 THE COURT: Well, the real question to me is what's
7 the committee supposed to do?

8 MR. BROWN: You know, to address the latest comments,
9 our intention is not to be involved in every aspect of this
10 bankruptcy. It's to provide as much protection for homeowners
11 as we can reasonably. And maybe in negotiating, you know, in
12 the papers, in the objections there's a supplemental servicing
13 order and had we been involved in the negotiation of the
14 supplemental servicing order we would have tried to add
15 language in there that would lift the stay for people moving to
16 vacate default judgments. In state court it's extremely common
17 for homeowners to find out they're in foreclosure with a
18 default judgment already entered against them.

19 But as it is right now, under the supplemental
20 servicing order, those homeowners would have to hire separate
21 counsel and move individually to lift the stay, whereas that
22 would be something on a general basis, across the board, we
23 would try and put in protections like that. There may be
24 things in the plan that need the eye of somebody whose sole
25 loyalty is to the homeowners in the United States and not to

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1 any particular other entity.

2 As it is now, the one homeowner that's on -- or the
3 borrower claimant that's on the committee, on the creditors'
4 committee, it's my understanding that she does not view herself
5 as a representative of all homeowners, but only as a
6 representative of the plaintiffs in her class action and many
7 homeowners have tried to contact her using the Website and the
8 phone number that's on there, and she hasn't returned any phone
9 calls. And I believe there's even -- Ms. Wendy Alison Nora on
10 the line, and I've had discussions with her that she's made
11 several calls to Rowena Drennan and received no calls back.

12 There are -- one of the key issues, immediate issues,
13 is you have the bar date of November 9th, and I think it's
14 extremely important to make sure that the notice gets out there
15 and homeowners know that if they don't put in a proof of claim
16 by November 9th, they're going to be forever barred. And I
17 don't think -- I know that the plan right now is to notify all
18 people whose loans are being serviced by GMAC, and this
19 isn't -- the one thing about this bankruptcy that makes it
20 unusual is that you have fifty-one debtors that were involved
21 in all aspects of the foreclosure process, from origination to
22 securitization to servicing to actually foreclosing. So by
23 just narrowing that notice to people that are currently being
24 serviced by GMAC, you're missing quite a few people that could
25 potentially have claims.

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1 One of the things, in my papers, I describe the
2 committee as a borrower's committee, and I guess that was
3 inartful. It should be a homeowners committee, because some
4 people with claims may have never borrowed money from a debtor;
5 they may just be serviced by a debtor.

6 THE COURT: Well, a lot of people don't own their
7 homes anymore, they were foreclosed.

8 MR. BROWN: Right, or they're no longer homeowners.
9 Right. So --

10 THE COURT: So calling it a homeowners committee is a
11 misnomer as well.

12 MR. BROWN: I mean, I'm sure that we could come up
13 with a title if the Court were to approve the motion. But the
14 point is 1102 gives you discretion in order to appoint
15 additional committees. And if not this case then what case?
16 Then why have that statute? This is such an unusual case.
17 It's such a large case. There are so many homeowners affected
18 by it. There are so many things going on between the FDIC
19 consent decree, the multiple forty-nine state decree.

20 THE COURT: It's not the FDIC.

21 MR. BROWN: Well, it's the --

22 THE COURT: The Federal Reserve Board.

23 MR. BROWN: The Federal Reserve, the consent decree.

24 THE COURT: And the justice department.

25 MR. BROWN: In addition to that, we also have one of

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1 the concerns that's expressed throughout the papers is the
2 cost. And the Court expressed its sticker shock to the cost of
3 Pricewaterhouse in order to do a foreclosure review. The cost
4 that would be involved in a borrowers' committee would be a
5 fraction of a percent of what Pricewaterhouse would be getting
6 just to do the foreclosure review.

7 I have a small firm, my co-counsel, Ms. Kramer, is
8 from a small firm. Our billable hour rates are probably in the
9 vicinity of half the hourly rates of most of the attorneys in
10 this room. So --

11 THE COURT: Even if a committee was formed, doesn't
12 mean you're going to represent them.

13 MR. BROWN: Understood, and I don't want to jump ahead
14 to that point, right, but in the event that a committee is
15 formed and in the event that that committee would select us,
16 our rates are nowhere near what the rates are --

17 THE COURT: I don't know how the U.S. Trustee is
18 supposed to -- if the Court granted a motion for the
19 appointment of, call it borrower/home owner -- question mark --
20 committee, how is the U.S. Trustee supposed to appoint members
21 to it?

22 MR. BROWN: Well --

23 THE COURT: I'll give you a chance, Mr. Masumoto.

24 MR. MASUMOTO: Okay.

25 MR. BROWN: One of the ways that they appointed

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1 members in the American Home case was they looked first to the
2 movants -- to the original group of movants. And we have
3 thirty-four original movants and twenty additional homeowners.
4 Then you could -- there are other people that have filed --
5 I've been following the docket in this case -- that have filed
6 on behalf of second mortgage HELOC clients. And there are
7 various constituencies that we can look at and say that they
8 would probably make sense.

9 I mean I would hope that if the Court were to appoint
10 a committee Rowena Drennan would rather be on the
11 borrowers/home owner -- question mark -- committee than the
12 creditors' committee. And I think that we would be able to put
13 in a --

14 THE COURT: For somebody who hasn't carried their role
15 on the creditors' committee it doesn't seem to me to be a
16 particularly likely selection for another committee. But --

17 MR. BROWN: I mean, obviously -- and I don't want to
18 overstep my boundaries, it's up to the Court and the trustee to
19 do it, but certainly we could help in analyzing the potential
20 classes of people that are out there.

21 THE COURT: What is that you think -- I mean I start
22 with -- and I said this before -- I mean I started with a view
23 that the last thing this case needs is another committee with
24 another expense, and I still have a lot of concerns in that
25 regard. I will tell you, because I've said this from the

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1 bench, some of the pleadings I've gotten from counsel, forget
2 the pro ses, from counsel have been fair -- for homeowners --
3 have been fairly outrageous, and it doesn't suggest to me that
4 this is an area for appropriate exercise of discretion. But,
5 yes, I am very concerned about whether the interests of people
6 whose loans are or were serviced by the debtors, whose homes
7 are currently or property is currently in a foreclosure
8 proceeding, or nondebtor foreclosure, or who have claims for
9 wrongful foreclosure, or other statutory or common law claims
10 against the debtors in denying lift stay motions in this case,
11 and in some of my opinions I've indicated that if people have
12 monetary claims against the debtors they need to be raised in
13 the claims allowance process and not through a proliferation of
14 lawsuits all around the country. So I'm not sure what the
15 appropriate role for a committee would be.

16 MR. BROWN: May I, Your Honor?

17 THE COURT: Go ahead.

18 MR. BROWN: The goal, I think, would be to make the
19 Court's life easier and to streamline all that and rather than
20 addressing it one at a time --

21 THE COURT: Well, I'm going to still -- I mean the
22 committee doesn't prevent people from filing motions to lift
23 the stay, they need to. The committee doesn't do that.

24 MR. BROWN: Correct. But if the committee can get
25 categories that we can negotiate with the debtor and the

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creditors' committee to include automatic categories like you
did in the supplemental servicing order that would --

THE COURT: Well, in the supplemental servicing order
there was someone from NACBA who appeared --

MR. BROWN: Yes.

THE COURT: -- in court, and I believe consulted with
the debtors' counsel before -- with some changes that were made
in the order. That seemed to me an appropriate role. I was
glad to have -- I respect NACBA. I was glad to see that they
had taken a position.

And if there were a provision in the Bankruptcy Code
similar to the provision on appointment of a consumer privacy
ombudsman, I'd be more inclined to say yes that's the role
that's needed not a committee and the havoc that it may well
work.

MR. BROWN: Well, certainly -- you know, hopefully you
got the tone from my papers that I'm not looking to create
havoc in any way, shape, or form. The fact that the National
Association of Consumer Bankruptcy Attorneys were involved was
very helpful, but if you look at the end result, people in
bankruptcy got more protection than people who weren't in
bankruptcy. And I think that comes from the fact that the
NACBA was involved.

If you look at the provisions, there's a difference
between the relief that's given automatically to consumers that

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1 are in bankruptcy, homeowners that are in bankruptcy, as
2 opposed to homeowners that aren't in bankruptcy and there are
3 things that -- one of the things is that it doesn't apply to
4 final judgments. And that's something that we would want to
5 try and negotiate.

6 As far --

7 THE COURT: Let me hear -- I know your position -- let
8 me hear from other -- let me hear -- can anybody --

9 MR. BROWN: Just one quick thing.

10 THE COURT: Quickly.

11 MR. BROWN: As far as the fishing expedition for
12 discovery, that's certainly not our intent and if it was in the
13 papers then I misstated it. But certainly, our intent is not
14 to start getting beyond what we're trying to do and that is
15 protect homeowners as much as we possibly can. Thank you.

16 THE COURT: Mr. Masumoto, let me hear from you now and
17 then I'll hear from those who filed oppositions.

18 MR. MASUMOTO: Good morning, Your Honor. Brian
19 Masumoto for the Office of the United States Trustee.

20 Your Honor, the U.S. Trustee's program takes a neutral
21 position regarding the motion for the borrowers' committee. We
22 stand ready to follow any of the Court's direction, but at this
23 point we don't -- we don't take a position.

24 THE COURT: Let's assume that I granted the motion,
25 how would you go about appointing a committee?

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1 MR. MASUMOTO: Well, as indicated, I did make some
2 inquiry and my understanding is that in the American Homes case
3 they did solicit the movants -- the movants for the motion for
4 a committee. We could do that. In addition, Your Honor, the
5 top fifty largest list of unsecured creditors that was
6 originally filed by the debtors' --

7 THE COURT: Well, if somebody files a fifty-three
8 trillion dollar claim, because they think that somebody's
9 threatened to foreclose on their house is -- if you look at a
10 fifty-three trillion dollar claim, and I think we had one of
11 those, is not a pretty good basis for deciding that somebody
12 ought to be on a committee.

13 MR. MASUMOTO: I agree, Your Honor. And, in fact, I
14 think we would hopefully be able to target it a little bit more
15 carefully. As I mentioned, the debtor apparently has some
16 records, they included some borrowers on the docket, the list
17 of unsecured creditors who, in fact, were solicited for the
18 original organizational meeting resulting in a, as Your Honor
19 is aware, the appointment of one borrower to that committee.
20 There weren't a large number of responses from borrowers to the
21 organizational meeting. So --

22 THE COURT: What's your view about whether the Court
23 can impose limits on the role of the committee or the budget
24 that a committee would have. And I'm not looking to unfairly
25 restrict what a committee does. Let's assume that I conclude

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1 that it would -- some representation is appropriate but it
2 clearly doesn't involve representation of specific homeowners
3 who bring lift stay motions or other -- or have actions pending
4 around the country.

5 MR. MASUMOTO: Your Honor, that's correct. And
6 typically for most committees, usually the -- it's rare to see
7 a cap placed on the budget, but I believe in some cases it has
8 been done.

9 As to the scope of the committee, I think the --
10 that's also within the Court's discretion to limit the scope.
11 I think frequently, the courts have taken the position that the
12 issue as to scope is also addressed at the time of the fee
13 application. Should they exceed the scope of their authority,
14 they will be challenged at the time of the fee application. I
15 understand that under the current circumstances that perhaps
16 certain prophylactic standards might be -- might avoid any
17 future disputes down the road. So I think that might be
18 helpful both for the committee as well as the other parties-in-
19 interest in the case.

20 THE COURT: Thank you, Mr. Masumoto.

21 MR. MASUMOTO: Thank you.

22 All right. All right. Let me hear from the
23 opposition. Mr. Mannal.

24 MR. MANNAL: Doug Mannal from Kramer Levin on behalf
25 of the creditors' committee.

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1 Your Honor, before we broke, you had a couple of
2 questions. I want to make clear what the committees' position
3 is, if it's not with respect to the PwC motion. The
4 committees' not objecting to the review of their own files.
5 The committees' objecting --

6 THE COURT: Well, we'll deal with the review of the
7 loan files at another time. Okay?

8 MR. MANNAL: But --

9 THE COURT: I just -- that's a separate part.

10 MR. MANNAL: -- your question was that the 250 million
11 in going to PwC, but not going to the borrowers. The -- a net
12 result of that review is going to be between -- estimated
13 between thirty and sixty million dollars going to borrower.

14 THE COURT: How are you protecting the interest of
15 borrowers and homeowners?

16 MR. MANNAL: Well, contrary to what Your Honor said
17 about Rowena Drennan, Rowena Drennan's counsel has participated
18 in almost all committee meetings, and they're are weekly
19 committee meetings, and they're lengthy committee meetings, and
20 the committee is comprised, as Your Honor knows, of Rowena
21 Drennan, the borrower, an indenture trustee, three RMBS
22 trustees, two security claimants, and two monolines. The
23 committee room discussions are often informative of various
24 parties' views as to what the committee should be taking in
25 this case.

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1 Rowena Drennan is no exception to voicing her views in
2 the committee room, Your Honor. They do, in fact, have a
3 voice, and that voice is heard. Any my colleague, Elise
4 Frejka, has spent numerous hours, both with the debtors and
5 with various homeowners, in negotiating, among other things,
6 the supplemental servicing order that provided specific relief
7 to homeowners.

8 What the committee's concern is with the borrowers'
9 committee motion is they don't -- the committee does not
10 understand what the borrowers' committee would do. The movants
11 say that they would not pursue any individual claims on behalf
12 of borrowers. We agree. That's not the role of a committee.
13 But we're not sure what their role would be in this case.

14 Mr. Brown had suggested that the borrowers' committee
15 be comprised of three different lawyers; a former attorney
16 general from Ohio, a consumer's right attorney from St.
17 Petersburg, and a plaintiff's lawyer from South Carolina. I'm
18 not certain that they all represent homeowners or that they're
19 knowledgeable in this space and that's why they should be
20 appointed to a committee in this bankruptcy case. But that was
21 certainly not made clear to me, Your Honor. And in Mr. Brown's
22 presentation I still don't understand --

23 THE COURT: But they're not -- they're probably not
24 creditors either.

25 MR. MANNAL: Creditors or equity holders, Your Honor.

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1 THE COURT: Well, they may do a good job, but they
2 don't sound like creditors. I don't know how -- Mr. Masumoto,
3 do they get appointed to a committee?

4 MR. MASUMOTO: No, Your Honor, and the precedent is
5 typically the asbestos or the -- I'm sorry. It's usually found
6 in the asbestos cases. Frequently all asbestos claimants are
7 represented by individual representatives, and the case law is
8 pretty specific, and the practice in the program is specific.
9 We do not appoint representatives. We look for the underlying
10 creditor, and they can choose to have someone represent them on
11 the committee.

12 THE COURT: Thanks, Mr. Masumoto.

13 MR. MANNAL: Your Honor, the statute, 1102(a)(2), and
14 if I could read it, Your Honor, it's says --

15 THE COURT: I have it. I'm looking at it.

16 MR. MANNAL: Okay.

17 THE COURT: I'm staring at it.

18 MR. MANNAL: It says "The Court may order appointment
19 of additional committees of creditors or of equity security
20 holders if necessary". Now, that's why we were surprised to
21 see who he was recommending serve on this committee, again, not
22 knowing what the committee would do, but what I think is lost,
23 and we tried to make clear, that the difference between this
24 case and American Home is that the debtors and this committee
25 learned from American Home, and the U.S. Trustee, different

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1 than what was in American Home, appointed a borrower to the
2 creditors' committee.

3 In this case a bar date notice was sent to all
4 borrowers, unlike American Home where it was only sent to those
5 borrowers that had a pending claim against the debtor. In this
6 case we have the supplemental servicing order that, as Your
7 Honor pointed out, was negotiated between the committee --

8 THE COURT: When you say notice was sent to all
9 borrowers is that current borrowers only?

10 MR. MANNAL: I believe that was sent to all current
11 borrowers, Your Honor.

12 MR. MARINUZZI: That's correct, Your Honor. All
13 borrowers whose mortgages were serviced as of the petition
14 date, any other creditor that was the subject of a proceeding,
15 a foreclosure proceeding, that had a claim against us, would
16 get it. And for borrowers we also included a letter advising
17 them of the bar date notice, and its purpose so that if they
18 had questions they could at least start with the letter.

19 MR. MANNAL: Your Honor, individual borrowers have
20 been --

21 THE COURT: Let me just -- Mr. Marinuzzi, does that
22 mean that anybody who had an action pending against any of the
23 debtors in a state or federal court around the country relating
24 to servicing or foreclosure would have received such a notice?

25 MR. MARINUZZI: They would have received the notice,

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1 Your Honor, yes.

2 THE COURT: Thank you. Go ahead, Mr. Mannal.

3 MR. MANNAL: We think the supplemental servicing order
4 was unique in cases such as these and provided a more level
5 playing field for the borrowers. As Your Honor is familiar,
6 there is no need to lift the stay to continue to make
7 counterclaims in foreclosure proceedings.

8 THE COURT: Well, counterclaims, yes; affirmative
9 defenses, no. Counterclaims seeking monetary relief were not
10 permitted under the supplemental servicing order. And that's
11 why we're fussing with the Silmon case in Alabama, because the
12 same affirmative defenses and counterclaims are being asserted,
13 so the supplemental servicing order does not deal clearly with
14 that issue.

15 MR. MANNAL: Understood, Your Honor. We don't see --
16 unfortunately, nothing's perfect. We don't see how a
17 borrowers' committee would change that. I think,
18 unfortunately, certain circumstances need to come before Your
19 Honor to make determinations on it.

20 The debtors have provided the borrowers with court
21 access. Yes?

22 THE COURT: Who's Ms. Drennan's counsel you say
23 participates in the committee meetings?

24 MR. MANNAL: Dan Flanigan is the bankruptcy expert.
25 He's with the firm Polsinelli Shughart, and David Skeens is at

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1 the firm of Walters Bender Strohbehn & Vaughan.

2 Now, with respect to, you know, they are not taking an
3 active role with respect to this particular motion, Your Honor,
4 but I can assure you that they have been participating actively
5 in all committee meetings and communications.

6 In addition, Your Honor, unlike the other cases, or
7 the American Home case, rather, both the committee and the
8 debtors have set up websites that are intended to assist the
9 borrowers and answer any questions they have regarding the
10 bankruptcy.

11 THE COURT: What information does the committee
12 provide on its website to assist borrowers?

13 MR. MANNAL: It has a list of frequently asked
14 questions, Your Honor, and it has telephone numbers of where
15 folks can go for additional information, and it explains the
16 basics of a bankruptcy proceeding.

17 THE COURT: Okay.

18 MR. MANNAL: Your Honor, we suggest that the
19 creditors' committee that is comprised of several different
20 creditor constituencies is the best way to facilitate a
21 negotiation. When Judge Gonzalez was faced with this issue in
22 the Enron case a special committee of energy traders sought the
23 appointment of a special energy trader committee. He found
24 that having certain committees representing individual creditor
25 specific claims would simply balkanize the various creditor

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1 constituents into several committees and only lead to an
2 increase in the costs and the delays that will hamper the plan
3 process.

4 THE COURT: What's the cite on that?

5 MR. MANNAL: Your Honor, I apologize. It was cited in
6 our papers. Just give me a moment.

7 THE COURT: Okay. That's all right. No, I'll find
8 it. That's okay.

9 MR. MANNAL: I'm sorry, Your Honor. It's Mirant
10 Americas Energy Marketing LP v. The Official Committee of
11 Unsecured Creditors of Enron Corp. I have it at 02 --

12 THE COURT: I'll find it in your brief.

13 MR. MANNAL: Okay.

14 THE COURT: That's okay, Mr. Mannal. Okay. Anything
15 else?

16 MR. MANNAL: Your Honor, unless you have any further
17 questions?

18 THE COURT: I don't. Okay. Mr. Marinuzzi, do you
19 want to be heard?

20 MR. MARINUZZI: Your Honor, I'll be very brief. I had
21 a question initially. I'm not sure what they're going to do.
22 Your Honor has the same question. And in response to that
23 question what I heard is we might have added things to orders
24 that were entered by the Court to make them more favorable.
25 They're free to pick up the telephone. Mr. Brown's been

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1 following the case, not just this week, but since we negotiated
2 that order. To the extent there was an issue that he wanted to
3 address in the order he could have contacted us. We're always
4 available if somebody needs to talk to us about a specific
5 borrower issue. Borrower issues are important to us, and
6 that's why we've done those things that weren't done in
7 American Home that Mr. Mannal just mentioned to the Court.

8 The issue Your Honor raised about the budget, I sat
9 there and I watched my colleague, Aaron Klein, spend a lot of
10 time describing to the Court the history of Ms. Jackson's
11 Chapter 13 proceedings. It didn't cost Ms. Jackson much money
12 to file what she filed. Maybe just postage and some personal
13 time, but it cost Mr. Klein a lot of time to get that
14 chronology right and go through the history of the filing. So
15 the fact that you might be able to budget a small amount of
16 money, relatively speaking, for a borrowers' committee, if they
17 file something that requires the debtors, the committee, and
18 any other third party to spend an awful lot of time responding
19 to what may or may not be baseless allegations, it's not that
20 cost that concerns us. It's the cost that gets extrapolated to
21 all the professionals that have to respond.

22 Your Honor, I think Your Honor hit the nail on the
23 head. It's a committee of creditors, and, so, people that want
24 to volunteer to serve on a committee, and the U.S. Trustee,
25 would have to trust that office to police this. They just

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1 can't be volunteers who decide that they want to make this a
2 personal crusade. And even just looking at the movants, as
3 they existed before last night's filing, there are a number of
4 movants, and the company went back and checked their records,
5 they don't even have any record of ever servicing a loan for
6 those movants. For some of them the loans have been discharged
7 and paid in full. We're not quite sure what claims they might
8 have as borrowers. And, yes, for some there are foreclosures
9 that are pending and foreclosures that have concluded. But I
10 don't know what a borrowers' committee is going to do to
11 enhance the rights of borrowers more than can be accomplished
12 by somebody picking up the phone, calling us.

13 If Mr. Brown thinks we missed serving the bar date
14 notice on a particular class of creditors that may have claims
15 that we didn't consider we didn't hear about it until today,
16 but we'll talk about it after the hearing. If we have to
17 extend the bar date or send out additional bar date notices to
18 people that may have claims that we didn't consider, we'll
19 talk. We'll talk.

20 THE COURT: All right. Anybody else want to be heard?

21 MS. NORA: Yes, Your Honor. Wendy Alison Nora,
22 partial joinder for the purposes of explaining to the Court the
23 necessity of the appointments of a committee to address the
24 issues of assets being claimed by these debtors to which the
25 debtors are not entitled.

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1 THE COURT: I'm sorry. You need to say that again. I
2 didn't understand you.

3 MS. NORA: Your Honor, in my partial joinder I've
4 explained to the Court that there is a problem with this
5 estate. The estate is claiming assets which it has taken by
6 robo-signed documents for which there is still relief available
7 in all states. If this case goes forward without examination
8 of the rights of the people whose property has been confiscated
9 by robo-signed documents this Court will be engaging in
10 inadvertent laundering of real estate titles by allowing those
11 properties to be liquidated on the procedures that the debtors
12 have obtained to liquidate assets which are not lawfully theirs
13 because they were procured by fraud.

14 THE COURT: How will the committee effect that, Ms.
15 Nora?

16 MS. NORA: I believe that it's necessary in the
17 negotiation of a plan in this case, Your Honor, for the debtors
18 to consider where it is claiming to get its liquidation funds
19 in order to pay the creditors. There's a strong conflict
20 between the securitization trustees, the insureds of the
21 securitization trusts, and the homeowners whose assets are
22 being confiscated or have been confiscated.

23 This is virtually unresolvable. I had thought that
24 maybe the committee would come up with a way that it could
25 address theses issues. No one is addressing the issue of the

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1 plan negotiations where the assets of persons who have been
2 defrauded through Court proceedings and nonjudicial foreclosure
3 proceedings will be liquidated in favor of the overwhelming
4 majority of the constituency of the unsecured creditors'
5 committee.

6 What I'm calling upon the Court to do is to sua sponte
7 create a committee of -- for robo-signing fraud claimants, and
8 this needs to examine the assets being claimed by the debtors
9 as to whether they can properly be liquidated and used to pay
10 other constituencies of creditors.

11 Also, just on a side note, I want to correct the
12 record. I only called Rowena Drennan once, discovered that she
13 was not someone who seemed able to deal with the kinds of
14 issues I was trying to bring to her attention, and I proceeded
15 on my own behalf to try to raise some of these issues for the
16 Court's consideration.

17 THE COURT: Thank you, Ms. Nora. Anybody else wish to
18 be heard? Come on up. There's somebody in the back.

19 MR. TAGGART: Good afternoon, Your Honor. I was
20 before the Court --

21 THE COURT: Your name?

22 MR. TAGGART: Oh, I'm sorry. Kenneth Taggart.

23 THE COURT: You're not a lawyer, Mr. Taggart. Is
24 that --

25 MR. TAGGART: I'm not a lawyer. I'm a pro se litigant

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1 in --

2 THE COURT: Okay. Yes. You've been here before.

3 MR. TAGGART: -- GMAC v. --

4 THE COURT: Correct.

5 MR. TAGGART: -- Taggart.

6 THE COURT: Right.

7 MR. TAGGART: Actually, I have a hearing October 10th,
8 and I came to voice my support for a borrowers' committee. I
9 saw the pleading. I Didn't get a chance to write up a brief.
10 In the October 10th hearing I had a few issues at that hearing,
11 and they're issues that are showing willful violations of GMAC,
12 especially when it's pro se litigants. They're, kind of, just
13 moving right along. They're ignoring many of the Court orders,
14 including the consent orders by the Feds, which were the two
15 consent orders which was the Federal Reserve.

16 My case itself is they're continuing to foreclose with
17 a sworn affidavit of Jeffrey Stephan to this day. And counsel
18 is aware of it. They've had certified letters. They're
19 continuing in court to do that. There's assignments of fraud
20 on the assignment of mortgage, so there's a question whether
21 it's even an asset.

22 It continues to go on. I filed a complaint with HUD
23 in the Philadelphia office approximately -- probably mid to
24 late May, I'm going to estimate, as well as the U.S. Attorney's
25 Office in Philadelphia, letting them know that they're

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1 continuing to violate their orders. And it's four months
2 later, and there's nothing done.

3 On my case -- my case is still pending -- they've
4 refused to withdraw that case on the Jeffrey Stephan case
5 alone. So there's a lot of borrowers out there that they don't
6 even know that they've been -- there's been fraud, or it may
7 take a while to discover, and if they're going to close the
8 door November 4th on all claims there's people that are going
9 to be disenfranchised, a lot of homeowners in the country.

10 There's people that can't come here in court. They
11 don't -- can't afford a lawyer. They've lost their homes or
12 are going to lose their homes, all based on fraud. There's a
13 lot of assets that they're claiming that GMAC does not even own
14 because of fraudulent affidavits. They're foreclosing -- how
15 can they claim an asset when it's based on fraudulent
16 affidavits of, you know, of the mortgage? So, there's several
17 issues in support. There's got to be some committee for
18 homeowners to be heard.

19 THE COURT: Thank you, Mr. Taggart.

20 MR. TAGGART: An independent committee.

21 THE COURT: Thank you, Mr. Taggart. Anybody else wish
22 to be heard?

23 MR. HOPPER: Your Honor, Patrick Hopper, pro se.

24 THE COURT: Go ahead, Mr. Hopper.

25 MR. HOPPER: Your Honor, really, as a movant and a pro

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1 se movant I don't -- I'd like to say I don't think that there's
2 a need to have a special committee, but there needs to be some
3 forum that we can go through and bring up issues. I would not
4 have gone through this process if there was an opportunity to
5 go through and present it to somebody else to bring up the
6 issues.

7 For instance, some of the issues shouldn't be case
8 specific. And I'm not trying to tie it back to my case. It's
9 more final orders. The final order that you did with BABC
10 expanded the scope versus what the original intent was of the
11 scope. It now gives them the ability to represent more
12 parties.

13 THE COURT: I'm sorry. I didn't understand your last
14 point.

15 MR. HOPPER: The final order that you signed, the
16 initial order basically said that BABC was going to represent
17 the debtor and/or investors, but now the final order says that
18 they will represent the debtor or other parties and/or parties
19 whom the debtors are obligated to defend and indemnify related
20 to servicing agreements.

21 THE COURT: All right. You're raising issues
22 regarding the retention of Bradley Arant, and that's not
23 appropriate for this discussion. I've already denied your
24 motion for reconsideration earlier today. But anything else
25 you want to speak to with respect to the motion for appointment

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1 of a committee?

2 MR. HOPPER: No, Your Honor. The only thing I would
3 say is if you'd give us an opportunity to go through and bring
4 up issues so we don't have to come to you and waste the Court's
5 time, and I do apologize for wasting the Court's time.

6 THE COURT: That's okay. All right. Thank you, Mr.
7 Hopper. Yes?

8 MR. HOPPER: Thank you.

9 THE COURT: Go ahead.

10 MR. WEIDNER: Please the Court, Your Honor, my name is
11 Matt Weidner. I'm a foreclosure defense attorney in St.
12 Petersburg, Florida. I think what you're seeing here in this
13 courtroom is a good example of why we need a borrowers'
14 committee. I hear all of the good lawyers here in this room
15 talking about important issues affecting this extraordinarily
16 complex case, but I don't hear many attorneys talking about
17 what happens on the ground down in Florida, in circuit
18 courtrooms.

19 What's currently pending -- and there are two very
20 specific issues I want to talk about -- in our Circuit Court
21 cases we expect to win a foreclosure case as a defense
22 attorney, and we are getting awards of attorneys' fees. But
23 what's happening down on the ground right now is those award of
24 attorneys' fees which are being assessed against GMAC, they are
25 then coming into court waiving the bankruptcy and saying you

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1 can't proceed on those. That's one example of claims that a
2 borrowers' committee might be able to address.

3 Second is I am litigant as a plaintiff in several
4 cases where other banks have broken down doors, entered into
5 people's homes, and we are getting awards in those cases as
6 well. I won't say we're getting awards, but we're getting
7 treatment of those cases. But the issue is down in the sticks,
8 if you will, or down there in the Circuit Courts, borrowers are
9 not represented. We are not provided --

10 THE COURT: But a committee does not take a position
11 in specific individual homeowner litigations.

12 MR. WEIDNER: Again, I'm just talking about two cases
13 or two classes there. That would be when borrowers are being
14 given affirmative relief and awards down in Circuit Court, and
15 then they're being barred, and then other affirmative relief
16 that might be sought.

17 You're hearing these other claims, that, frankly, may
18 not be relevant, but I think the purpose would be to have a
19 focus for those and to have the borrowers and have the people
20 that are raising these claims be able to speak to that
21 borrowers' committee and treat those claims there.

22 THE COURT: Thank you.

23 MR. WEIDNER: Yes, sir.

24 THE COURT: Anyone else wish to be heard?

25 MS. RUSH: Good afternoon.

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1 MS. NORA: Your Honor, Wendy Alison Nora again. Just
2 to reiterate --

3 THE COURT: No, Ms. Nora. Ms. Nora? Ms. Nora? There
4 are other people in the courtroom who wish to be heard. I've
5 already allowed you to speak. Go ahead in the courtroom.

6 MS. NORA: Thank you. With the negotiation of the
7 plan, Your Honor --

8 THE COURT: No, Ms. Nora, not you. I heard you. I
9 gave you a chance to address the Court. There are other people
10 in the courtroom waiting to be heard. I'm not recognizing --

11 MS. NORA: I understand, Your Honor.

12 THE COURT: Ms. Nora, I am not recognizing you to
13 speak again. At the podium.

14 MS. NORA: Okay.

15 THE COURT: Go ahead.

16 MS. RUSH: Good afternoon, Your Honor. My name is
17 Paula Rush. I filed the amicus brief in this case. I was --

18 THE COURT: Which, you know, Ms. Rush, I ought to just
19 strike the brief. You called to try to get an extension of the
20 page limits, and my chambers advised you no, so you filed this
21 monstrosity that purports to comply with the page limits,
22 attaches a separate document with the definitions of what you
23 try to put in of the terms you use in the document. So what do
24 you want to say?

25 MS. RUSH: Okay.

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1 THE COURT: So it quickly. Don't you ever dare do
2 something like that again, okay?

3 MS. RUSH: I -- I apologize, Your Honor. I do. I
4 apologize. I had trouble cutting it down, and I apologize.

5 THE COURT: Well, you know, everybody has a problem,
6 but twenty-five pages is an appropriate limit unless someone
7 establishes good cause to file a longer brief. You didn't. I
8 refused. And you just did it anyway.

9 MS. RUSH: I apologize. I do.

10 THE COURT: What are the points you want to make on
11 the motion?

12 MS. RUSH: Okay. The points that I want to make is
13 I'd actually like to be a voice of reason in all of this. I
14 was the chairperson in the American Home Mortgage case, and I
15 think that what you hear from pro se homeowners is there is a
16 lot of confusion. They don't understand the process. They
17 don't understand that proof of claim filing is the way to
18 prosecute your claim. And I do think that having someplace
19 that they can go, even if it's just a phone call that says I
20 don't understand this, and we say, you know, file a proof of
21 claim. That's the process. There's all kinds of things we did
22 in the American Home case that assisted borrowers in writing
23 language into the plan, writing an ombudsman into the plan.
24 There was a lot of issues that came up that affected
25 homeowners.

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1 This is an extraordinary bankruptcy that covers
2 origination, servicing, securitization, as well as foreclosure
3 actions, and I do think that, you know, I don't want you to
4 throw all people under the bus. There's always going to be
5 crazy homeowners out there. And believe me, I deal with them.
6 I've been an auditor for six years working with lawyers all
7 over the country. There are the crazies out there.

8 There's also the elderly couple who can't advocate on
9 their own behalf. They're not even equipped to do that.
10 There's people that have valid claims. There's people that
11 don't have valid claims. And, you know, I do feel that if
12 homeowners have a voice in this matter, a place to go, some
13 touch point from somebody that can give them the right
14 direction, the right information, and, again, help with notices
15 and things. They talked about their notices. Their notices
16 primarily say keep making your payments. This doesn't affect
17 you. And the questions that they posed, which the generic
18 answers specifically say that.

19 So, I do think that homeowners need some experienced
20 counsel like Mr. Brown and Ms. Bennette to have that person
21 that they can go to that will hopefully bring them into reason
22 and not file crazy things into this court thinking that that's
23 okay. Because it is. It's an extreme amount of resources for
24 the Court and the committee and the debtors to deal with things
25 that sometimes aren't even valid. They're crazy. And the

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1 committee does not represent anyone individually. They look
2 for issues that affect all homeowners and see where they can
3 maybe insert a paragraph in something or negotiate a little bit
4 of the language in something so that they do have that
5 representative voice and they feel that they have that
6 representative voice. I think the homeowners in this case
7 have, you know, somewhat earned that right.

8 Again, you may have seen nothing but the crazies so
9 far.

10 THE COURT: No, that's not true, okay? And it's far
11 from it. And the Court has attempted in every instance to
12 examine every lift stay motion that's come before the Court.
13 Where something really appropriately should be raised as a
14 proof of claim I've so indicated. In the Silmon case, which I
15 heard earlier today, the reason we've had several hearings
16 already is because the Court has carefully looked at the facts
17 and circumstances and the issues in that case, and I do that in
18 every one of them.

19 MS. RUSH: I -- I --

20 THE COURT: I'm mindful of the problems that
21 homeowners have in dealing with -- when they don't have
22 lawyers, or even if they do -- with dealing with the complexity
23 of the bankruptcy proceeding. I'm very mindful of that. But
24 the issue, really, from my standpoint is the unsecured
25 creditors' committee the appropriate body in existence today to

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1 deal with those issues or should a separate committee, with the
2 additional cost and burdens that it can create, should it be
3 formed. Okay? Any last points you want to make?

4 MS. RUSH: Just the point that I had made in my brief,
5 and, again, I apologize for that, was that I do feel that
6 there's inherent conflicts of the parties that are seated on
7 the committee against the homeowners, and I think that's the
8 reason why, and that's the reason why Judge Sontchi, in the
9 American Home case, came to the conclusion that it was better
10 to have the separate committee and not a committee of people
11 that were against --

12 THE COURT: All right. Let me hear anybody else.
13 Does somebody else in the courtroom want to be heard? Thank
14 you, Ms. Rush.

15 MR. EMRICH: Good morning, Your Honor. Edmund Emrich
16 with Shearman & Sterling representing Citibank N.A. Your
17 Honor, our papers set forth our position. We're not objecting
18 to the merits of the motion. We're not taking a position on
19 that. Rather, our sole concern is making sure that the sale
20 process that's currently scheduled goes forward as scheduled,
21 because it would be prejudicial to all creditors, including
22 Citibank, if that process were to be delayed because of the
23 appointment of a new committee.

24 THE COURT: Okay. Thank you.

25 MR. EMRICH: Thanks.

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1 THE COURT: Anybody else in the courtroom wish to be
2 heard? Mr. Brown, you wanted to be heard in reply?

3 MR. BROWN: Yes, Your Honor. Briefly. With respect
4 to the information on the websites I attached to my reply a
5 letter that was on the website that's sent to homeowners that,
6 in essence, tells them that they don't have to do anything in
7 this case.

8 With respect to the hotline, we've had some of our
9 movants call the hotline and keep track of what's going on,
10 and, to make a long story short, they didn't get answers. When
11 they called the hotline the hotline referred them to their
12 lender, to their servicer. When they called their servicer
13 their service referred them back to the hotline. Then they
14 referred them back and so on, and they got disconnected over
15 and over again, and they didn't have answers. And on the
16 hotline itself there's a message that says we can't provide
17 legal or financial advice. If you think that you're owed
18 money, then you can file a proof of claim. And I think that if
19 the Court were to approve the committee you certainly could put
20 any limits --

21 THE COURT: I have your arguments. I'm going to take
22 the --

23 MR. BROWN: Okay.

24 THE COURT: -- the matter under submission.

25 MR. BROWN: Thank you.

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1 THE COURT: Thank you very much, Mr. Brown. Mr.
2 Marinuzzi?

3 MR. MARINUZZI: Your Honor, maybe we have a suggestion
4 that the Court might entertain, and I'll let --

5 THE COURT: Mr. Mannal?

6 MR. MARINUZZI: -- committee counsel present it.

7 MR. MANNAL: Doug Mannal on behalf of the creditors'
8 committee. Your Honor, it may make sense, in light of the
9 concerns that the Court has expressed, to have a borrower be
10 appointed to the creditors' committee. In speaking with the
11 United States Trustee earlier today he had suggested that he
12 did not have an objection to doing so.

13 THE COURT: In other words, appoint an additional
14 member to the creditors' committee?

15 MR. MANNAL: Additional member to the creditors'
16 committee.

17 THE COURT: Mr. Masumoto, you want to address that?

18 MR. MASUMOTO: Your Honor, just to make the record
19 clear. We're not endorsing that procedure or not.

20 THE COURT: I understand.

21 MR. MASUMOTO: Pursuant to the statute, if a party-in-
22 interest petitions the Court for that relief the Court can
23 direct the U.S. Trustee to change the composition of the
24 committee, but that decision we'll leave up to the Court.

25 THE COURT: Thank you, Mr. Masumoto. All right. The

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1 Court's taking the matter under submission.

2 MR. MARINUZZI: Thank you, Your Honor. I believe that
3 brings us to page 12 of the agenda, the adversary proceeding
4 matters Lewis v. GMAC Mortgage. I don't see Mr. Lewis in
5 court.

6 THE COURT: Anybody in court or on the phone for Mr.
7 Lewis? Mr. Marinuzzi, my understanding is that Mr. Lewis has
8 been the subject of more than one order identifying him as a
9 vexatious litigator --

10 MR. MARINUZZI: That is correct, Your Honor.

11 THE COURT: -- in Ohio. Could somebody provide me
12 with those orders?

13 MR. MARINUZZI: Your Honor, we can.

14 THE COURT: Do I have them?

15 MR. MARINUZZI: They were submitted in connection with
16 another pleading that we filed. We'll get them to Your Honor.

17 THE COURT: Okay.

18 MR. MARINUZZI: Your Honor, actually, my colleague,
19 Samantha Martin, just presented me with one of the orders. Can
20 I approach?

21 THE COURT: Yes, please. All right. What I've been
22 handed is the four-page order in a case -- first off, it's in
23 the Court of Common Pleas of Franklin County, Ohio, in the case
24 Huntington National Bank v. Sidney T. Lewis, case number 05
25 CVH-07-7346, and it's an order dated July 24, 2007.

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1 All right. My understanding, is that Mr. Lewis has
2 had at least one bankruptcy proceeding in the Bankruptcy Court
3 in Ohio.

4 MR. MARINUZZI: Your Honor, I am not the expert on Mr.
5 and Mrs. Lewis.

6 THE COURT: Mr. Martin, can you --

7 MR. MARINUZZI: Samantha Martin is, so I'll cede the
8 podium to her.

9 THE COURT: Can you help me here?

10 MS. MARTIN: Yes, Your Honor. There were two
11 foreclosure proceedings and three bankruptcy proceedings in
12 Ohio.

13 THE COURT: And was there an order precluding -- in
14 one or more of the bankruptcy proceedings precluding Mr. Lewis
15 from filing any additional papers?

16 MS. MARTIN: I believe there was a reference in one of
17 the documents that was filed to a bankruptcy order, but I'm not
18 entirely sure.

19 THE COURT: Okay. I mean, look, what I have before me
20 are two motions. I have the debtors' motion to dismiss the
21 complaint on the pleadings. Debtor answered -- attempted to
22 answer the complaint.

23 Mr. Lewis has moved for summary judgment. If I had
24 any idea in the world what it is he's seeking it might make
25 life easier. Yes, he is a pro se litigant, but I'm mindful of

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1 the fact that I will have to look to confirm.

2 I would ask you to do this. If you would research the
3 issue further as to any additional orders entered by any
4 federal or state court with respect to Mr. Lewis determining
5 that he is a vexatious litigator or the equivalent of that, but
6 some courts don't use that term, but -- I may be mistaken, but
7 I was under the impression that in at least one of his
8 bankruptcy proceedings the judge had entered an order
9 precluding Mr. Lewis from doing any further court filings.

10 MS. MARTIN: I have in my own notes here that he was
11 noted to be an adjudicated vexatious litigator by the Ohio
12 Court of Appeals, but I don't have that document in front of
13 me.

14 THE COURT: Okay. I'm going to take the matter under
15 advisement. I would ask if you would gather together whatever
16 you can, file it so that -- and, you know, that Mr. Lewis will
17 have copies of it as well, and I'm going to await receiving
18 either further papers or a notice that you can't find any
19 before acting on the cross motions. Okay?

20 MS. MARTIN: Yes, Your Honor.

21 THE COURT: Thank you very much. Mr. Masumoto?

22 MR. MASUMOTO: Brian Masumoto for the Office of the
23 United States Trustee. Your Honor, I just wanted to seek
24 clarification and also to clarify the record. I wanted to make
25 it clear that the U.S. Trustee has, on many occasions, with

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1 respect to companies added members to a committee for any
2 number of reasons. Sometimes when interested parties appear.
3 Sometimes when there are resignations. In this circumstance we
4 have not had a prior request to add to the creditors'
5 committee. The first indication was when Mr. Mannal stood up
6 to say it.

7 I wanted to make it clear that the U.S. Trustee
8 certainly has that authority, but what I was alluding to was
9 1102(a)(4), under which the Court has the authority to direct
10 the U.S. Trustee to add. If Your Honor wants us, the U.S.
11 Trustee, to consider membership additions at this time we're --
12 as I said, we normally do that, but I don't want to interfere
13 with the Court's determination at this point.

14 THE COURT: Mr. Masumoto, let me think about it.
15 Okay. I'll take it under advisement and I'll decide.

16 Does it take an actual court order from -- if the
17 Court indicated that it would be beneficial if there was at
18 least one additional homeowner/borrower representative on the
19 committee, do you need an order?

20 MR. MASUMOTO: Not necessarily, Your Honor. For
21 example, if this had been a chambers conference and there was
22 an open discussion about the committee certainly the U.S.
23 Trustee would take those into consideration.

24 THE COURT: Okay. Look, I don't know what I'm going
25 to do on this motion. I do believe it's important that

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1 homeowners/borrowers have an easy voice in this process who
2 they can contact. Not to deal with their specific problems.
3 That's for them. If somebody has a -- if there's a foreclosure
4 pending or they want to file a proof of claim that's for them
5 to do it, but it's important that, you know, because many of
6 the people who are facing foreclosure, they're facing
7 foreclosure because they don't have the money to pay a mortgage
8 payment. They don't have money to retain counsel. They have
9 all sorts of problems. It's very important that they feel they
10 have a voice and that they have a voice in the process, and not
11 necessarily through a separate committee.

12 I'm going to cogitate on this. Thank you, Mr.
13 Masumoto.

14 MR. MASUMOTO: Thank you, Your Honor.

15 THE COURT: I appreciate it.

16 MR. MARINUZZI: Your Honor, I only rise to add in
17 response to Your Honor's question regarding process that in the
18 case of the Los Angeles Dodgers, which was before Judge Gross,
19 we represented the committee. In that case there was a motion
20 to appoint a committee of season-ticket holders.

21 THE COURT: I remember reading about that.

22 MR. MARINUZZI: And the resolution, which didn't get
23 to the Court, was, after a discussion with the U.S. Trustee's
24 Office, the debtors, and the committee, to appoint two
25 additional members to the committee representing the interests

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1 of season-ticket holders. There was no order, to my
2 recollection, from the judge directing the U.S. Trustee to make
3 that change.

4 MR. MARINUZZI: Well, I'm also mindful of the -- I
5 mean, committees vote on things, and the votes ought to be
6 reflective, to some extent, of the interests in the case, the
7 creditors' interests in the case, so it's not as simple as just
8 saying that additional people should be appointed to the
9 committee.

10 MR. MARINUZZI: I'm only addressing the procedural
11 point, Your Honor --

12 THE COURT: All right. Okay. All right. Okay.

13 MR. MARINUZZI: -- because I went through it already.

14 THE COURT: Let's try and finish up here. What's
15 next?

16 MR. MARINUZZI: Your Honor, the last items on the
17 agenda appear to be items that were resolved. They were lift
18 stay motions where stipulations were presented to the Court for
19 consideration.

20 THE COURT: These are the issues of, what, HELOC
21 mortgages where the first mortgagee is moving to lift the stay
22 because it needs to deal with junior interests if the property
23 is foreclosed?

24 MR. MARINUZZI: That's correct, Your Honor.

25 THE COURT: Okay. And this is also the subject of the

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1 order that you're -- proposed order that you're continuing to
2 negotiate with Chase, I take it?

3 MR. MARINUZZI: That's correct, Your Honor.

4 THE COURT: All right. Does anybody wish to be heard
5 with respect to -- these are listed as uncontested settled
6 matters on the agenda, to be resolved in accordance with
7 stipulations. Does anybody wish to be heard with respect to
8 those?

9 MS. FREJKA: Your Honor, Elise Frejka, Kramer, Levin,
10 for the committee.

11 THE COURT: Yes, Ms. Frejka.

12 MS. FREJKA: The committee has reviewed in detail the
13 documentation that was submitted to the debtor, has inquired,
14 had answers, and supports the relief on these stipulations.

15 THE COURT: Okay. All right. I'm going to go ahead
16 and -- anybody else wish to be heard? All right. I'm going to
17 go ahead and approve each of those stipulations. I obviously
18 have to see the final form of them, but I understand the issues
19 on this and hopefully you'll be able to come to an agreement
20 with Chase to resolve any of the remaining objections that come
21 up with a procedure that'll apply across the board rather than
22 requiring these individual motions in each of the cases.

23 MR. MARINUZZI: Your Honor, I hate to do this, but
24 let's go back to the Sydney Lewis motions.

25 THE COURT: Yes.

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1 MR. MARINUZZI: We've recovered two orders, one from
2 the Bankruptcy Court. Your Honor has a great recollection of
3 the facts.

4 THE COURT: All right. I would still -- I will take
5 these, but I would like them added to -- do a filing on ECF so
6 that Mr. Lewis can see these since he's not participating in
7 the hearing. What I've been handed are two orders, one dated
8 April 27, 2009. It is in Mr. Lewis's Chapter 7 bankruptcy in
9 the Southern District of Ohio, Eastern Division, before Judge
10 Hoffman, and it's ECF docket number 326. It's case number 07-
11 57237. And the second order, also by Judge Hoffman in the same
12 Chapter 7 bankruptcy case. So I will add -- so now I have
13 three orders, which I will review carefully, but if you would
14 go ahead and -- if there are any others find them. I don't
15 know that there are any others. I think I was aware that in a
16 Chapter 7 case --

17 MR. MARINUZZI: We'll search for them, Your Honor.

18 THE COURT: -- and it's obviously the one before Judge
19 Hoffman. Okay.

20 MR. MARINUZZI: That concludes the agenda, Your Honor.
21 Thank you very much for your time.

22 THE COURT: We're adjourned.

23 MR. MARINUZZI: Thank you.

24 (Whereupon these proceedings were concluded at 12:55 PM)
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I N D E X

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript is a true and accurate record of the proceedings.

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